

**Report No. 13.24**      **PLANNING - 26.2019.1.1 - Planning Proposal for an amendment to Byron LEP 2014 to permit Community Title subdivision and dwellings at Lot 38 DP 1059938, Alidenes Road, Wilsons Creek**  
**Directorate:**            Sustainable Environment and Economy  
**Report Author:**        Alex Caras, Land Use Planning Coordinator  
**File No:**                    I2019/1914

**Summary:**

Council received a planning proposal earlier this year to amend Byron LEP 2014. The planning proposal requested that all of Lot 38 DP 1059938 Alidenes Road (12.27 ha) be included in an R5 Large Lot Residential zone with a Minimum Lot Size of 0.3 ha and a prospective lot yield of 30.

However, nearly 50% of the lot is affected by the 1% AEP flood event (2100 yr) and a 30m riparian buffer which is more than previously considered in the Byron Rural Land Use Strategy. Based on Council's developable land assessment and allowance for utilities and wastewater disposal the site has a carrying capacity of 15 dwellings (upper limit). Major traffic upgrades would be required to public roads if yields exceed 19 dwellings.

Yankee Creek traverses the site and needs to be managed and rehabilitated as a single unit. The best way to achieve a sustainable dwelling yield, good environmental outcomes and an efficient use of infrastructure is to list the subject land in Schedule 1 of BLEP 2014 to permit the Community Title subdivision of the land to create up to 15 small lots, with the balance in a single community lot. Each small lot can be used for a dwelling subject to development consent. The community lot will include the Yankee Creek waterway and suitable riparian buffers and be subject to a coordinated management regime. An amended planning proposal enabling this outcome is contained in Attachment 1.

The amended planning proposal is consistent with the Byron Rural land Use Strategy 2017 and the North Coast Regional Plan.

It is recommended that Council proceed with the amended planning proposal and forward it to the Department of Planning and Environment for a Gateway Determination.

**NOTE TO COUNCILLORS:**



In accordance with the provisions of S375A of the Local Government Act 1993, a Division is to be called whenever a motion for a planning decision is put to the meeting, for the purpose of recording voting on planning matters. Pursuant to clause 2(a) under the heading Matters to be Included in Minutes of Council Meetings of Council's adopted Code of Meeting Practice (as amended) a Division will be deemed to have been called by the mover and seconder of all motions relating to this report.

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**RECOMMENDATION:**

- 1. That Council proceed with the amended planning proposal contained in Attachment 1 (E2019/85691) and forward it to the NSW Department of Planning, Industry and Environment for a Gateway determination.**
- 2. That Council pending a positive Gateway determination, undertake public exhibition of the planning proposal in accordance with the determination requirements.**
- 3. That Council consider a submissions report post-exhibition that includes any recommended changes to the planning proposal for final adoption.**

**Attachments:**

- 1 26.2019.1.1 Planning Proposal Alidenes Rd (amended version for Gateway submission),  
E2019/85691 
- 5 2 26.2019.1.1 - Original Planning Proposal lodged Feb2019 - Request to rezone 31 Alidenes Road -  
Ardill Payne & Partners (excl appendices), E2019/85641 

**REPORT**

Subject Land

The subject land is described as Lot 38 DP 1059938, Alidenes Road, Wilsons Creek. It is an area of 12.27 hectares with approximately 550 metres frontage to Alidenes Road and approximately 170 metres frontage to Wilsons Creek Road. The site is burdened by a 10-metre wide Right of Carriageway that provides access to Lot 1 DP 701525 (southwest of subject land) from Alidenes Road. It is also burdened by two 10-metre wide easements for pipelines that stem from the old Mullumbimby power station and run along the Wilsons Creek Road boundary. The land previously contained two dwellings and one of these was recently demolished.



**Figure 1 - Subject site showing old Mullumbimby power station at southern boundary**

The Planning Proposal

- An amended planning proposal has been prepared (Attachment 1) to permit:
- A subdivision using a neighbourhood community title scheme enabling up to 15 neighbourhood lots. Each lot can be privately owned. It will also include one lot comprising the residue of the land that will be in shared ownership and will contain the main Yankee Creek waterway that runs through the land.
  - Each privately owned lot will be limited to only one dwelling.

Planning Framework and Options

*Byron Rural Lands Strategy*

In July 2018 the then NSW Department of Planning and Environment endorsed the Byron Rural Lands Strategy 2017 (RLUS). The RLUS has identified the subject land as part of an area that is a “*priority site for future rural lifestyle living opportunities*”. The subject land, together with parts of the surrounding lots), is identified for a “*Potential Dwelling Yield of 15 -30*”.

Listed among the relevant policy directions on pages 13 and 14 of the RLUS are:



- Future rural development will not be supported on sites, or areas within a site [that is mapped as being affected by the] 1:100 year flood risk and climate change lands .....
- Future rural lifestyle living opportunities will serve to repair and enhance the land's natural values in a manner which more than offsets the full impact of the site's population and pressures on the environment; and
- Future rural lifestyle living opportunities will preserve scenic amenity, minimise environmental impacts and better manage natural or man-made hazard risks.

This strategy was endorsed by the NSW Department of Planning, Industry and Environment (DPIE) in July 2018.

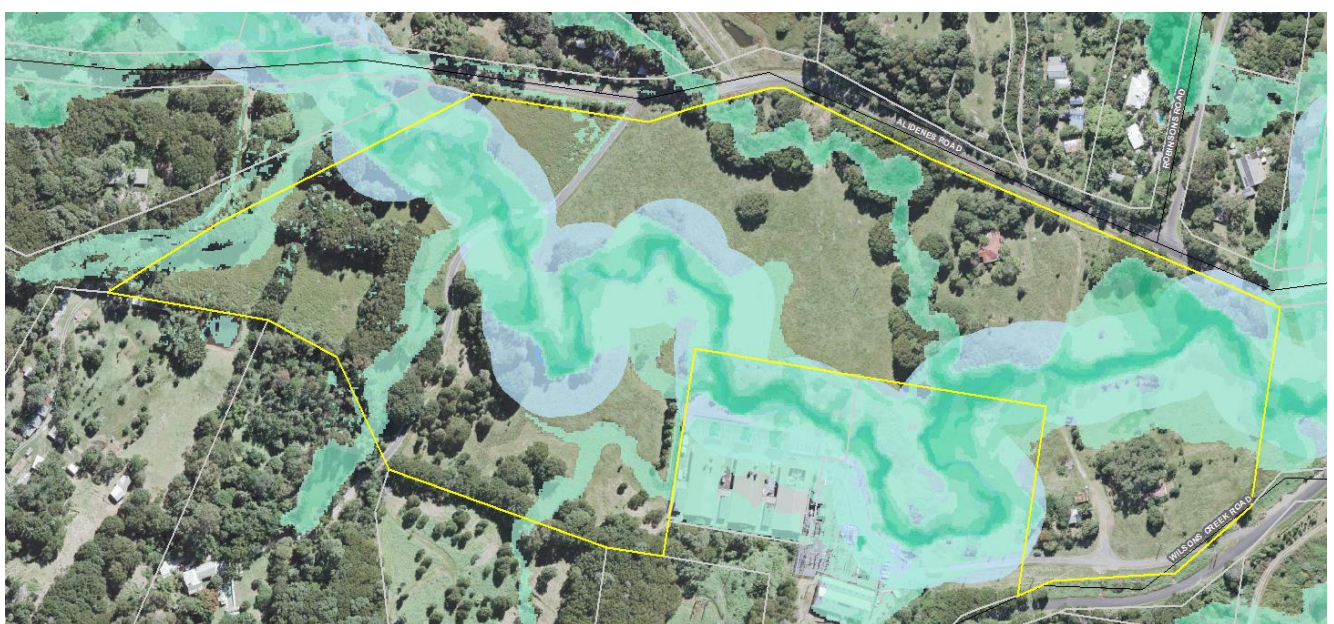
Although the RLUS identified a potential yield of 15-30 dwellings for this site, this range was indicative only and subject to more detailed assessment at the planning proposal and DA stage. In this case the extent of flood prone land determined in the planning proposal has reduced the developable area considerably. Riparian buffers, internal roads and onsite waste water disposal will also limit the yield of this site.

#### *North Coast Regional Plan*

As the subject land is in the RLUS, it is consistent with the North Coast Regional Plan 2036 which states in Action 24.1: *"Identify new rural residential areas in a local growth management strategy or rural residential land release strategy endorsed by the Department"*

#### *Option 1: Include all of the land in the R5 Large Lot Residential Zone?*

The subject land is currently zoned RU2 Rural Landscape under Byron LEP 2014 (BLEP14). The original planning proposal submitted to Council (Attachment 2) requested that all of Lot 38 DP 1059938 Alidenes Road (12.27 ha) be included in an R5 Large Lot Residential zone, with a Minimum Lot Size of 0.3 ha and a prospective lot yield of 30. This was based on assumed filling of some flood prone land and use of levees to protect other areas. The applicant is no longer proposing such measures as part of this rezoning. Detailed flood modelling reveals that approximately 45% of the site is affected by flooding in the 1% '2100 yr' Climate Change flood event (see flood map below).



**Figure 2 – Map showing 1% '2100 yr' Climate Change flood extent on the subject site (green shaded areas) AND 30m Riparian Buffer to Yankee Creek (blue shaded areas)**

The flood affected land runs through most of the site along the Yankee Creek waterway. Yankee Creek is also mapped as 'Key Fish Habitat' and a 30m minimum riparian buffer has been applied. Council generally does not support rezoning of flood prone land for large lot residential purposes, or filling of flood prone land to enable low density large lot residential development. Given the extent of riparian and flood-related constraints, the option of rezoning all of the subject land to R5 Large Lot Residential is **not supported**.

*Option 2: Include only flood-free and non-riparian land in the R5 zone?*

The option of applying an R5 zone only on the "flood free" and non-riparian land would leave an RU2 zone residue in one irregular shaped lot (as shown in Figure 2), which in turn would need to be owned and managed by a single private landowner as it cannot be further subdivided (ie. under Clause 4.1D of Byron LEP 2014). As future access to the site must be via Alidenes Road, those parts of the R5 zoned land that do not have direct access to Alidenes Road would require access across RU2 land that is separately owned and managed. Any bridges located on the RU2 residue also would not be owned by those that benefit from them, creating ambiguity over their long term maintenance. This is not an acceptable scenario and therefore the option of rezoning the "flood free" part of the land to R5 with an RU2 zoned residue is **not supported**.

*Option 3: Schedule 1 listing in LEP 2014 enabling Community Title Subdivision*

Council has over many decades preferred that rural settlement offset its impacts by an environmental repair framework. This policy position is still reflected in the current RLUS, the cost and responsibility of which should be borne by all of the residents of this new estate. Given the complex drainage of the subject land and the biodiversity value of Yankee Creek (as key fish habitat), this outcome is best achieved by a Community Title development and a Schedule 1 listing in LEP 2014, rather than application of the R5 zone with an arbitrary minimum lot size. A Community Title development also has the advantages of shared internal access roads and waterway crossings, the potential for collective onsite wastewater management systems and disposal areas, suitable buffers to Yankee Creek and greater flexibility for 'private' lot sizes. For these reasons this option is **recommended**.

*Option 4: Identify land in LEP 2014 Multiple Occupancy and Community Title Map and make subject to Clause 4.2B of BLEP14?*

The subject land could also be identified on the LEP 2014 *Multiple Occupancy and Community Title Map* pursuant to *Clause 4.2B (Maximum number of dwelling houses or dual occupancies on multiple occupancy or rural landsharing community developments)* as a future Community Title development area with a specified number of dwellings. The main drawback with this option is that this clause also permits dual occupancy. Under this scenario if the maximum number of lots is created at the subdivision DA stage (say 15 lots based on developable area) and any subsequent dwelling applications also include a dual occupancy, these additional dwellings would result in some lots having no dwelling permissibility and hence becoming sterilised. It is therefore important that the number of dwellings be limited to the same number as prospective lots to avoid problems with wastewater disposal in proximity to Yankee Creek and limit the traffic generation to less than 19 dwellings, as any more than 19 dwellings would require a complete redesign of the Alidenes/Wilsons Creek Road intersection via a Voluntary Planning Agreement (which the applicant does not favour).

In conclusion, a *Schedule 1 – Additional Permitted Uses* listing (Option 3) can clearly identify the maximum number of lots permissible and limit each lot to only one dwelling. It can also require Community Title subdivision to ensure the coordinated management of Yankee Creek and other shared infrastructure by future residents of this estate.

*Developable land and dwelling yield*

The site has minimal vegetation of ecological value with most trees being camphor laurel. Two threatened plants (Red Boppel Nut and Rough-shelled Bush Nut) were found and they are both located adjacent to Yankee Creek on flood prone land. The Yankee Creek waterway is potential habitat for native fish and could be readily rehabilitated to improve water quality, create fish habitat and encourage native birds and mammals to use the area. It is mapped in the NSW Biodiversity Values map. If the waterway and its curtilage are community owned and managed as a community neighbourhood lot by future residents, then the potential for adverse environmental outcomes can be minimised.

The site contains a greater portion flood prone land than originally anticipated when it was identified in the RLUS. Approximately 6.5 ha of the 12.27 ha site (53%) is above the 1% '2100 yr' Climate Change flood event and outside the 30m minimum riparian buffer (Figure 2). This is the area that is potentially suitable for dwellings and onsite wastewater disposal. The rationale is that these areas will not be used for large lot residential dwellings or on site waste management systems, and that filling of flood prone land or constructing levees will not be acceptable on this site.

Table 10 from the RLUS provides a guide to determining the dwelling yield of the subject land and can be applied as follows:

- *20% of unconstrained/assessable land area required for infrastructure (eg. internal roads);*

**Comment:** In this case internal roads will be mainly in the form of "shared driveways" so **10%** should be sufficient.

- *Only 50% of assessable land can be developed;*

**Comment:** In this case we have assessed land that is flood free and outside the 30m riparian buffer at **6.5 ha**, approximately 53%.

- *Lot sizes on land suitable for development ranging from 0.5ha (low end) to 1ha (high end), rounded to nearest multiple of '5' (except where potential dwelling yield < 5).*

**Comment:** we have used **0.4 ha** (slightly below the low end lot size in the RLUS) because the applicant has expressed a preference for smaller lots and pending more detailed investigations at the DA stage, it can maximise the yield from the developable land.

An allowance of 10 % of developable land for infrastructure and utilities (such as roads and power) reduces the developable area to approximately 5.85 ha. Assuming an average minimum lot size of 0.4 ha the site has a carrying capacity of 14.6 dwellings. If this is rounded up to the nearest multiple of five then the maximum yield of the site is 15 dwellings. Rounding up is consistent with the RLUS methodology and provides a site yield that is more likely to justify communal on site wastewater management. However, this is a maximum number and achieving this with acceptable environmental impacts would need to be demonstrated at the DA stage. It does provide the basis for the dwelling yield in the schedule listing.

Other planning issues*Onsite Waste water Disposal*

The site is traversed by Yankee Creek together with a series of intermittent watercourses, dry gullies and drainage channels. Given the number of intersecting gullies and drainage channels plus Yankee Creek, the drainage buffers across the subject site are extensive. Clearly there is a limited area (outside of the typical 40m buffer) which is suitable at a planning proposal level for the

dispersal of treated effluent. As the Onsite Sewage Capability Assessment supplied by the applicant has not considered the typical buffer or assessed land that is free of the buffer, there is a need to balance dwelling yield and lot size with the ability of this site to accept wastewater over the long term.

- 5 Lots of 0.5 ha are generally at the low end of lot size capable of dealing with wastewater from modern dwellings and 1 ha would be more conservative. If lot sizes less than 0.5 ha are proposed for dwellings then a communal wastewater treatment and disposal system is likely to be required. Under this scenario a Community Title scheme would be the most appropriate development approach for the subject site from a wastewater perspective. This would allow for a certain number of lots to connect into a collectively owned and managed onsite treatment system (ie. as part of a commonly-owned lot), if desired.

#### *Traffic and roads*

- 15 Public roads will be used to access the site but Council will not be accepting dedication of any internal roads or bridges needed to access proposed dwelling locations. In a Community Title development shared internal roads will remain the responsibility of future residents. The traffic assessment undertaken by the applicant indicates that some of the proposed dwellings would have access from Wilsons Creek Road, with the bulk of dwellings gaining access from Alidenes Road.
- 20 The applicant has been advised that Council staff do not support any direct access from Wilsons Creek Road due to safety issues/risk with the access point.

- 25 If 20 or more dwellings were proposed in this planning proposal, with all dwellings requiring access to the site from Alidenes Road, then the applicant would need to upgrade Alidenes Road from Wilsons Creek Road through to Robinsons Road as well as redesign the Alidenes/Wilsons Creek Road intersection. This would be very expensive and require a Voluntary Planning Agreement to fund, which is not supported by the applicant. Limiting the maximum dwelling yield to 15 dwellings overcomes this requirement, noting that signage, line marking and improvements to sight distances may still be required at the DA stage.

#### *S. 9.1 Directions and SEPPs*

The planning proposal is justifiably inconsistent with some Section 9.1 directions because it:

- has not yet been referred to RFS for bushfire consideration
- introduces site specific provisions
- restricts the potential development of resources on the site

These justifiable inconsistencies are all discussed in more detail in the planning proposal (Attachment 1).

- 40 The planning proposal is consistent with the relevant SEPPs including SEPP 55 (Remediation of Land). These are discussed in more detail in the planning proposal (Attachment 1).

#### Options to Move Forward

There are a range of options for Council to consider on this matter, as summarised below:

- 45 1. Proceed with the planning proposal based on a *Schedule 1 Additional Permitted Uses* listing in LEP 2014 that would permit a community title subdivision of up to 15 neighbourhood lots/dwellings, with the common 'residue' lot to include the Yankee Creek waterway and suitable riparian buffers. Request DPIE issue a Gateway determination for the planning proposal as attached to this report (**Recommended option**)
- 50 2. Proceed with the planning proposal based applying an R5 zone on the "flood free" and non-riparian land (only), while retaining the existing RU2 zone on the common 'residue' lot incorporating the Yankee Creek waterway and suitable riparian buffers (as shown in Figure

2). Request DPIE issue a Gateway determination for a revised planning proposal reflecting this outcome. (Not Recommended)

3. Proceed with the planning proposal based on including all of the land in the R5 Large Lot Residential zone with a Minimum Lot Size of 0.3 ha, as submitted by the proponent. Request DPIE issue a Gateway determination for a revised planning proposal reflecting this outcome. (Not recommended).

4. Proceed with the planning proposal based on including the subject land on the LEP 2014 *Multiple Occupancy and Community Title Map* pursuant to *Clause 4.2B – Maximum number of dwelling houses or dual occupancies on multiple occupancy or rural landsharing community developments*. Request DPIE issue a Gateway determination for a revised planning proposal reflecting this outcome. (Not recommended).

### Conclusion

Council has anticipated this planning proposal as a response to including the subject land in the Byron Rural Land Use Strategy. There is sufficient information to support the planning proposal in its amended form and proceed to a Gateway submission.

In accordance with recommended option '1.' above, Council should request DPIE issue a Gateway determination for the planning proposal as attached to this report (Annexure 1).

## STRATEGIC CONSIDERATIONS

### *Community Strategic Plan and Operational Plan*

| CSP Objective   | CSP Strategy   | DP Action   | OP Activity   |
|---|--|---|---|
| <i>Objective 4: We manage growth and change responsibly</i> | 4.1 Support the visions and aspirations of local communities through place-based planning and management | 4.1.3 Manage development through a transparent and efficient assessment process | 4.1.3.10 Prepare and assess Planning Proposals and Development Control Plans, and amend Local Environmental Plan maps |

### Financial Implications

If Council chooses to proceed with the planning proposal, it will be at the proponent's expense as a landowner initiated planning proposal. Full cost recovery of the remaining stages will be required by Council. If the applicant chooses not to pay then the planning proposal will not proceed.

If Council chooses not to proceed then the matter does not incur any additional costs.

### Statutory and Policy Compliance Implications

The relevant policy considerations are addressed above and in the planning proposal attached to this report.