



IRF22/3712

## Gateway determination report – PP-2022-2442

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Amend Zoning and Minimum Lot Size to enable large lot residential development at South Arm Road, Urunga

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# Acknowledgment of Country

The Department of Planning and Environment acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

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**Table 1 Reports and plans supporting the proposal**

Relevant reports and plans
Planning Proposal Report – Rezoning and Reduction in Minimum Lot Size, South Arm Road, Urunga (June 2022)
North Coast Regional Plan 2036
Bellingen Shire Local Strategic Planning Statement 2020-2040
Bellingen Shire Local Growth Management Strategy 2007
Bellingen Shire Community Strategic Vision 2027

# 1 Planning proposal

## 1.1 Overview

**Table 2 Planning proposal details**

<b>LGA</b>	<b>Bellingen</b>
<b>PPA</b>	<b>Bellingen Shire Council</b>
<b>NAME</b>	<b>Amend Zoning and Minimum Lot Size to enable large lot residential development at South Arm Road, Urunga</b>
<b>NUMBER</b>	<b>PP-2022-2442</b>
<b>LEP TO BE AMENDED</b>	<b>Bellingen LEP 2010</b>
<b>ADDRESS</b>	<b>201 &amp; 261 South Arm Road, Urunga</b>
<b>DESCRIPTION</b>	<b>Lot 200 DP 1242996; Lot 2 DP 1232259; Lot 124 DP 755557</b>
<b>RECEIVED</b>	<b>10/10/2022</b>
<b>FILE NO.</b>	<b>IRF22/3712</b>
<b>POLITICAL DONATIONS</b>	<b>There are no donations or gifts to disclose and a political donation disclosure is not required</b>
<b>LOBBYIST CODE OF CONDUCT</b>	<b>There have been no meetings or communications with registered lobbyists with respect to this proposal</b>

## 1.2 Objectives of planning proposal

The planning proposal contains objectives and intended outcomes that adequately explain the intent of the proposal.

The objective of the planning proposal is to enable large lot (rural) residential development whilst also ensuring the protecting and ongoing conservation of land identified as High Conservation Value.

The objectives of this planning proposal are clear and adequate.

## 1.3 Explanation of provisions

The planning proposal seeks to amend the Bellingen LEP 2010 per the changes below:

**Table 3 Current and proposed controls**

Control	Current	Proposed
Zone	RU4 Primary Production Small Lots	R5 Large Lot Residential and C2 Environmental Conservation
Minimum lot size	40ha	1ha (R5 zone) 200ha (C2 zone)
Number of dwellings	1	18

The planning proposal contains an explanation of provisions that adequately explains how the objectives of the proposal will be achieved.

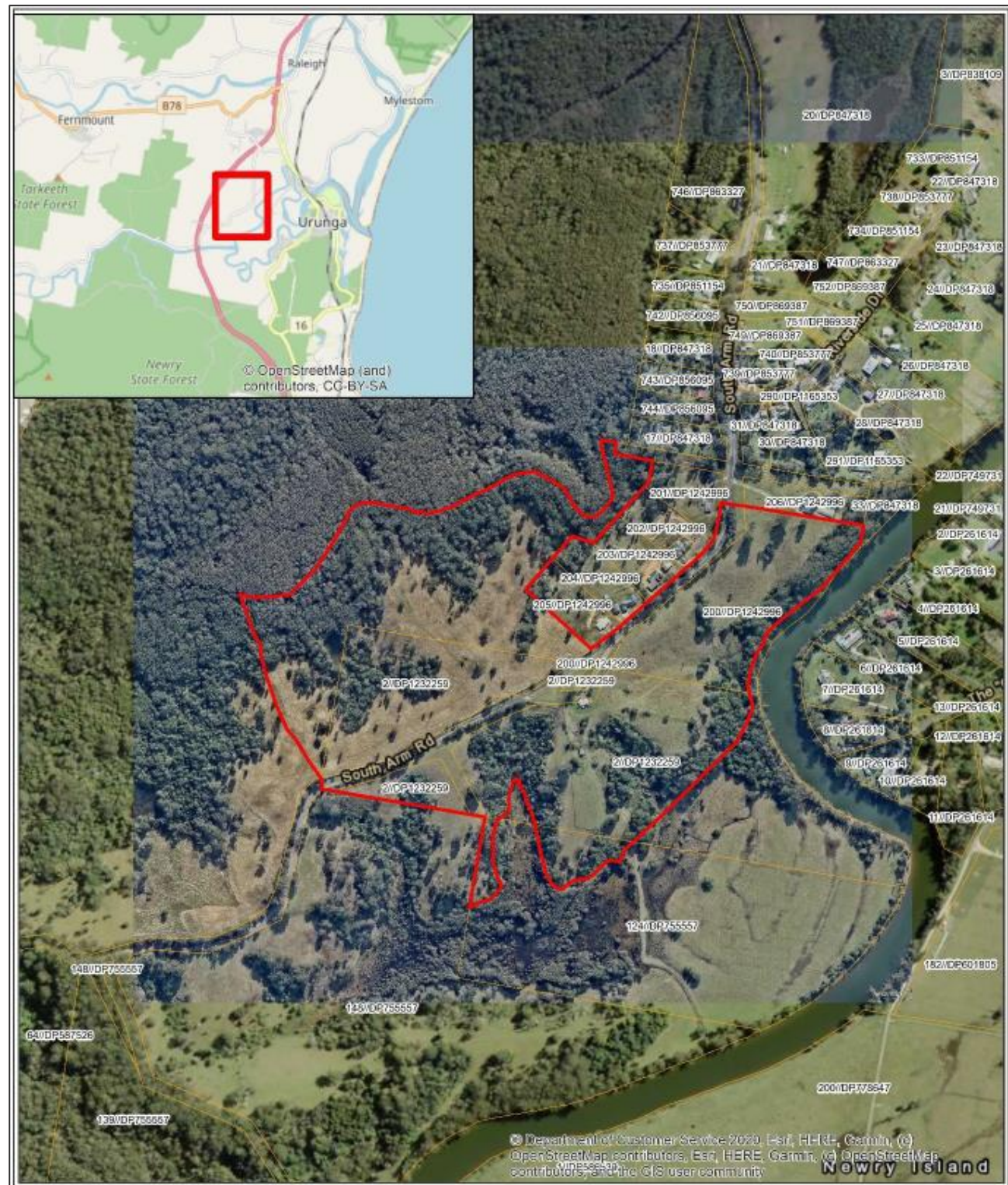
## 1.4 Site description and surrounding area

The 36.65 ha site is located approximately 2.5 km west of Urunga on the NSW Mid North Coast and comprises parts of Lot 124 DP755557, Lot 2 DP1232259 and Lot 200 DP1242996 (**Figure 1**). The lots have been used for primary production purposes, predominately grazing and cropping, for an extended period of time. The planning proposal area boundary follows the extent of the existing RU4 Primary Production Small Lot zoning within the site (**Figure 2**).

South Arm Road follows a ridge and bisects the study area in a north-east to south-west alignment. The site contains predominantly cleared paddocks on the ridge and upper slopes, remnant and regenerating native vegetation in gullies, and native forest and wetland communities on the lower slopes and flats. The site is bounded by existing large lot residential development and forested wetlands to the north, the Kalang River and predominantly cleared floodplain farmland to the east, freshwater wetlands to the south, and forested wetlands and farmland to the west.

The planning proposal area currently has a minimum lot size for subdivision of 40ha (**Figure 3**).





**Figure 1 Subject site shown in red (source: EcoLogical Australia)**

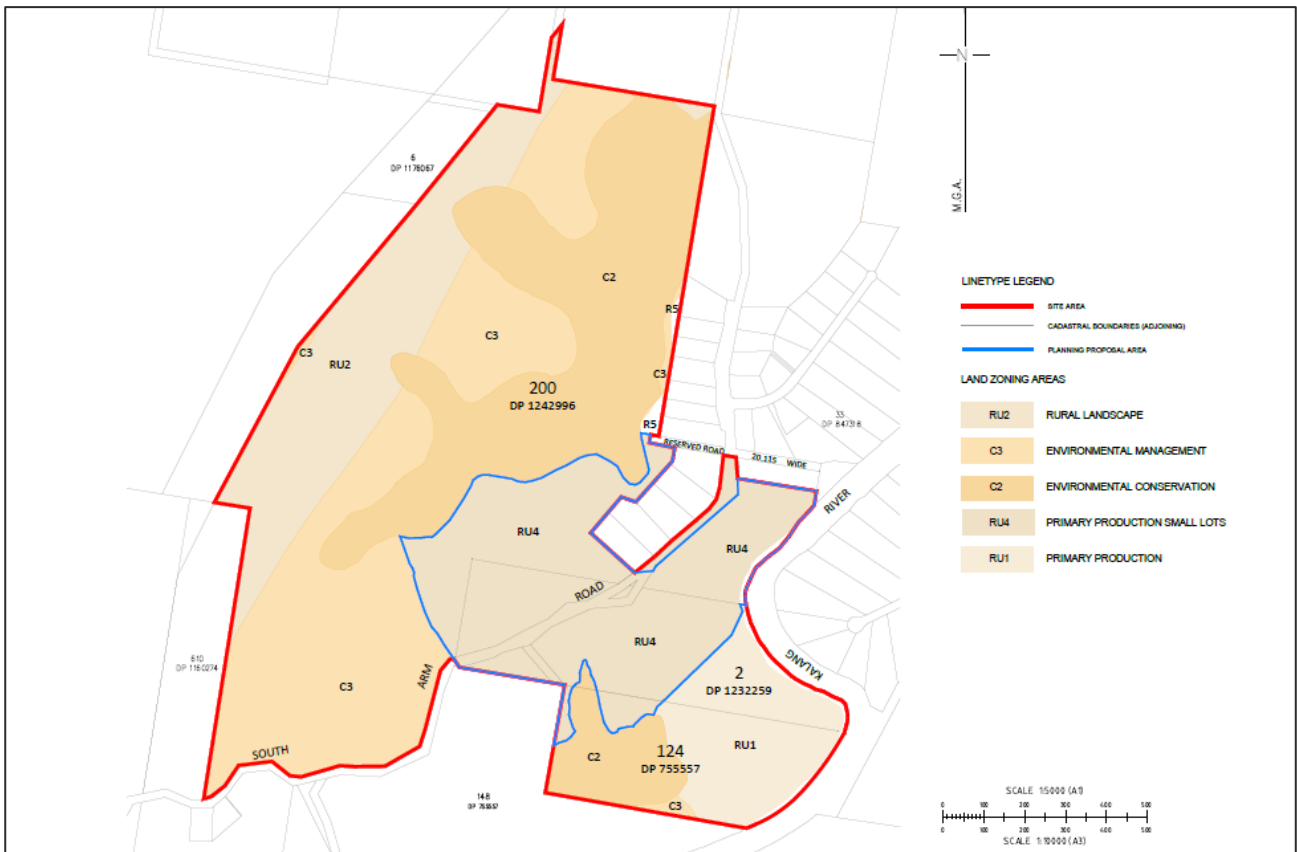


Figure 2 Site context and existing zoning (source: planning proposal)

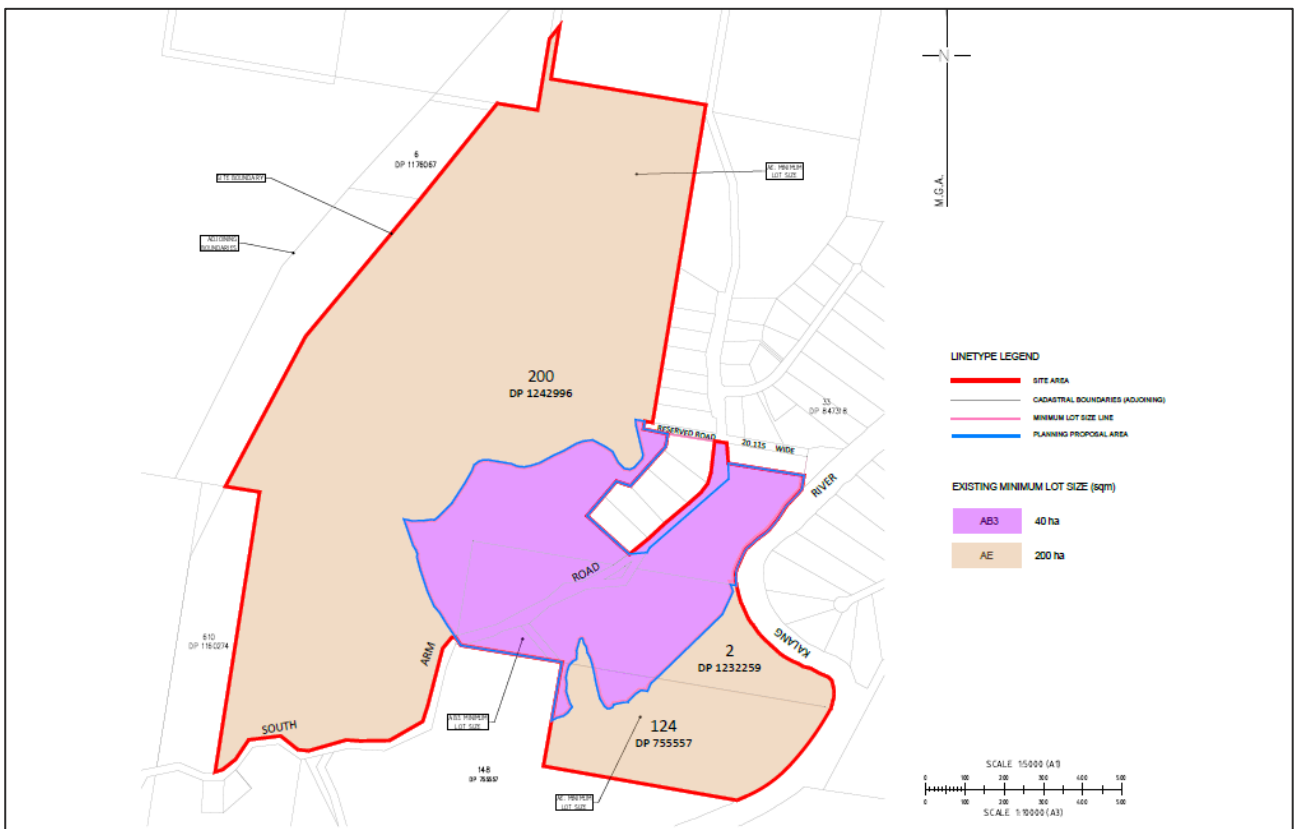


Figure 3 Current minimum lot size map (source: Planning Proposal)

## 1.5 Mapping

The planning proposal includes mapping showing the proposed changes to the Land Zoning (Figure 4) and Minimum Lot Size maps (Figure 5), which are suitable for community consultation.

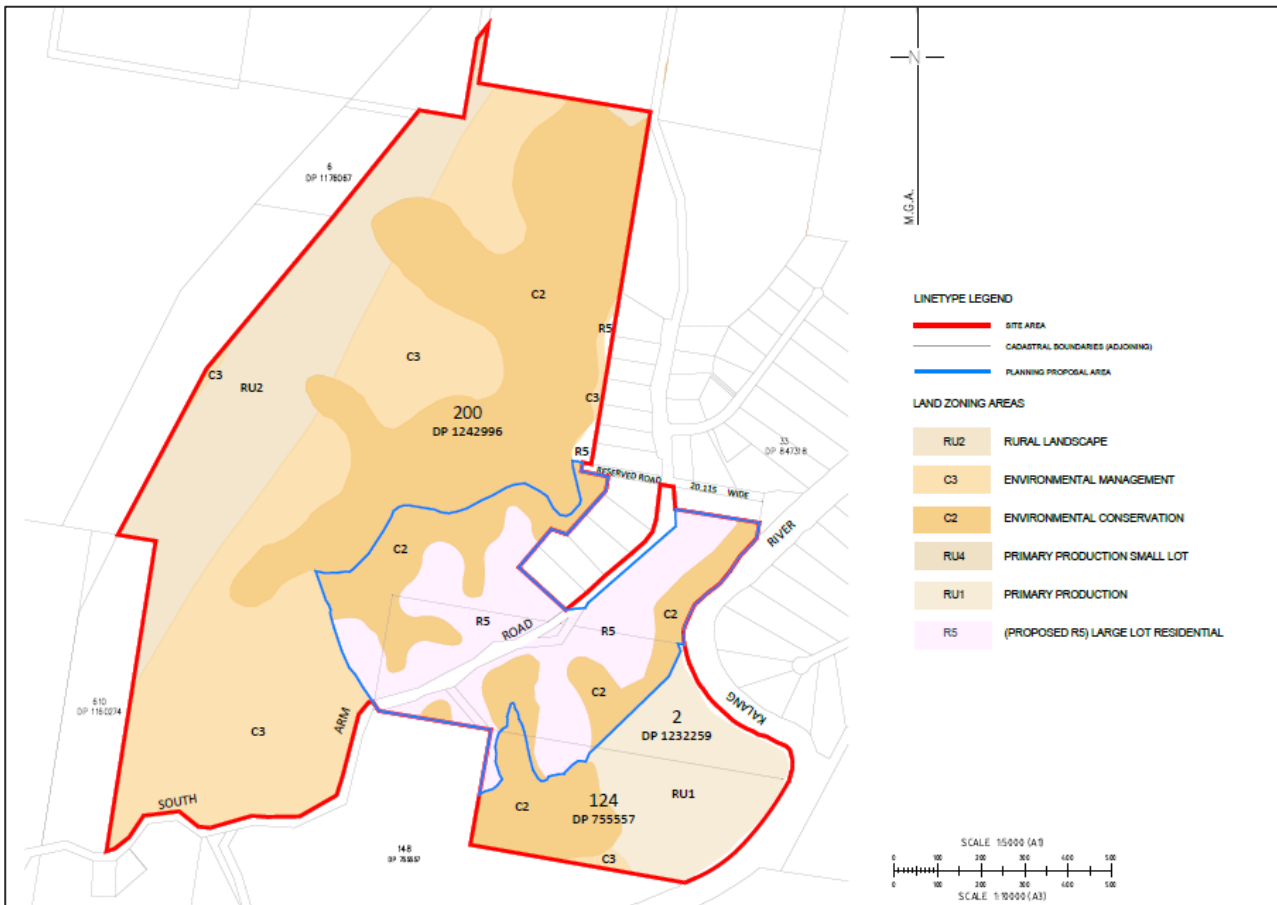


Figure 4 Proposed zoning map (source: Planning Proposal)



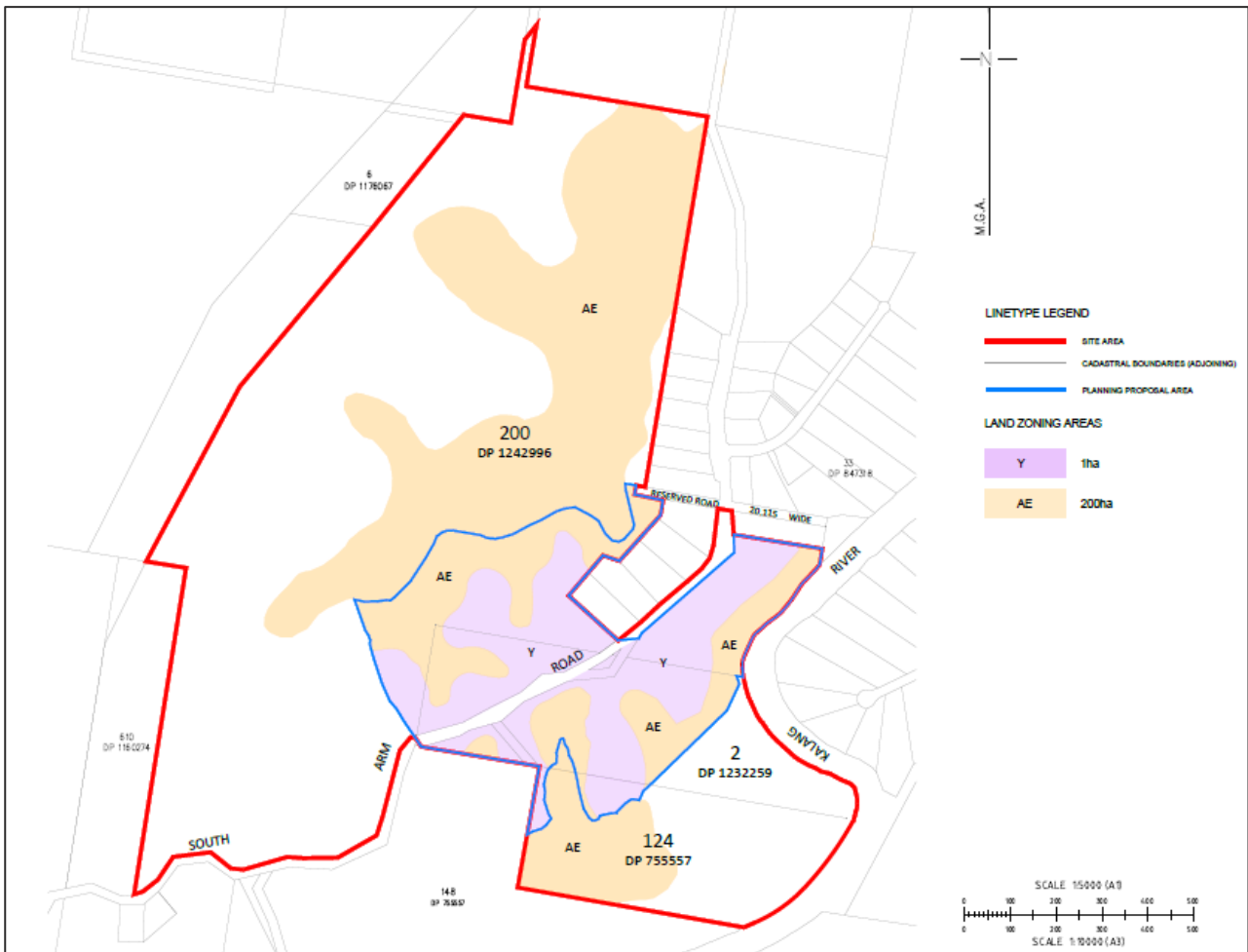


Figure 5 Proposed minimum lot size map (source: Planning Proposal)

## 2 Need for the planning proposal

Council has confirmed that the demand for rural residential housing remains high across the LGA and that the proposal will result in additional housing, better use of the land and enhanced environmental protection outcomes. Currently areas with high environmental value throughout the site are impacted by cattle grazing, including the coastal wetlands. The proposal would rezone much of this land for environmental protection.

The planning proposal reflects the intent of the Bellingen Local Strategic Planning Statement and Council's Department approved Bellingen Local Growth Management Strategy 2007.

The planning proposal is considered the best means of achieving the intended outcomes.

## 3 Strategic assessment

### 3.1 Regional Plan

The following table provides an assessment of the planning proposal against relevant aspects of the North Coast Regional Plan 2036. The planning proposal is largely consistent with the objectives and directions of the plan, as outlined below.

**Table 4 Regional Plan assessment**

Regional Plan Objectives	Justification
Direction 11: Protect and enhance productive agricultural lands	The proposal will result in the loss of agricultural lands, currently zoned for small lot agriculture. The land is not mapped as Important Farmland and is considered to be of relatively marginal value in comparison to the alluvial landscapes in the locality. While the land is currently zoned for small lot agriculture, it has been used for extensive agriculture. The land adjoins existing rural residential development, which potentially reduces its suitability for small lot agriculture activities. The existing impacts of unrestricted cattle grazing through and adjoining the identified High Environmental Value Wetland areas are also considered to be of potentially greater environmental concern than subdivision for large lot residential purposes. Having regard to these factors, Council is not concerned at the potential removal of the RU4 zoned land from agricultural production purposes. The inconsistency is therefore considered to be of minor significance.
Direction 23: Increase housing diversity and choice	The proposal is not inconsistent with this Direction. Action 23.2 nominates that local growth management strategies should be used to be to consider local housing needs, then be implemented through local planning controls to provide housing choice and diversity. As discussed in section 3 of this report, the proposal is consistent with a Department approved LGMS.
Direction 24: Deliver well-planned rural residential housing areas	While the proposal is within the coastal strip, it is consistent with this Direction as the land is identified with a Department approved LGMS.

While the proposal discusses consistency with the regional plan's urban growth area variation principles, it is noted that these principles are not applicable for R5 Large Lot Residential zones.

## 3.2 Local

The proposal states that it is consistent with the following local plans and endorsed strategies. It is also consistent with the strategic direction and objectives, as stated in the table below:

**Table 5 Local strategic planning assessment**

Local Strategies	Justification
Bellingen Local Growth Management Strategy 2007	<p>The subject land is recognised within the Department approved LGMS as being potentially able to be subdivided, subject to the landowners submitting appropriate justification and support to Council.</p> <p>This site is the last remaining site identified in the LGMS for investigation for potential future R5 development.</p>

Local Strategic Planning Statement	<p>The planning proposal is not inconsistent with the themes and planning priorities contained within the LSPS. The proposal directly relates to Action 1.1 – Rural Lands Strategy. This action provides that a Rural Lands Strategy will be completed for Bellingen Shire that reviews the suitability of existing planning controls for all rural land within the Shire (including C zones and the R5 zone). The Rural Lands Strategy will also review the suitability of existing land for either agricultural use, or subdivision into smaller lots to meet the demand for larger lifestyle lots whilst protecting the further incursion of lifestyle lots into productive agricultural areas.</p> <p>Assessment of the potential for the site's rezoning for rural residential development was initially identified to be addressed as part of this action. While this planning proposal precedes the work intended to be undertaken as part of the Rural Lands Strategy, Council has previously acknowledged that the landowners may instead, in the interim, chose to submit a planning proposal request that relies upon the facilitative provisions of the LGMS 2007. Council is satisfied that the planning proposal addresses issues of relevance to the site and reflects Council's previous acknowledgement of its potential investigation for future R5 zoning.</p>
Bellingen Shire Community Strategic Vision 2027	The planning proposal is not inconsistent with the Bellingen Shire Community Strategic Vision 2027.

### 3.3 Section 9.1 Ministerial Directions

The planning proposal is consistent with relevant section 9.1 Directions except where identified below:

**Table 6 Section 9.1 Ministerial Direction assessment**

Directions	Consistency	Reasons for Consistency or Inconsistency
1.2 Implementation of Regional Plans	No – Justifiably inconsistent	The planning proposal is generally consistent with the overall intent of the North Coast Regional Plan 2036 except in relation to protection of agricultural land as discussed above. The inconsistency is considered to be of minor significance as the proposal will result in the protection of high conservation value land whilst permitting development of relatively unconstrained land identified within an endorsed LGMS and the land is not identified as important farmland.

Directions	Consistency	Reasons for Consistency or Inconsistency
3.2 Heritage Conservation	No – Justifiably inconsistent	<p>The planning proposal area is understood to include a former Bora Ground which was noted to have high significance to the local Aboriginal community. Feedback from the LALC identified that any tangible remains of the Bora Ground were likely removed during construction of the current residence but noted that the site maintained cultural significance.</p> <p>The site is considered to be an area of archaeological sensitivity which may be subject to impact as part of future earthworks. The planning proposal acknowledges that further investigation to determine the nature and significance of any potential archaeological deposits will be required prior to the commencement of any works. The LALC has advised that they would like to be involved in any future development of the site.</p> <p>It is considered that this issue can be adequately addressed further at the development application stage and that the existing provisions of the Bellingen LEP are sufficient to ensure that any archaeological deposits located are appropriately assessed and managed. The inconsistency with this Direction is therefore considered to be justified. Formal consultation with the LALC is recommended as part of the planning proposal exhibition.</p>
4.1 Flooding	No – Justifiably Inconsistent	<p>The proposal is inconsistent with this Direction as the proposal contains land that falls within flood planning area, as identified in the Lower Bellinger/Lower Kalang Flood Study. Parts of the site are subject to flooding in the 1%AEP or the Probable Maximum Flood. The inconsistency is considered to be of minor significance as the majority of land below the PMF is outside the proposed R5 zone and the proposal will facilitate development of dwellings only on land that is above the PMF. While access to an urban centre is not available in a range of flood events, the Bellingen LEP 2010 and DCP 2017 contain provisions that allow this matter to be adequately addressed at the development application stage, as discussed further below in relation to flooding.</p>
4.2 Coastal Management	No – Justifiably Inconsistent	<p>The site is located within the coastal zone, as defined under the Coastal Management Act 2016, comprising the coastal wetlands and littoral rainforest area, coastal vulnerability area, coastal environment area and coastal use area. Some proposed lots are located on land mapped within the 'proximity to coastal wetland' area.</p> <p>The proposal is justifiably inconsistent with this Direction as it includes provisions which give effect to the objectives of the Coastal Management Act 2016, the NSW Coastal Management Manual, the NSW Coastal Design Guidelines 2003 by seeking to apply a conservation zone the land identified as Coastal Wetland. Further consideration of the number and layout of proposed lots area can be undertaken as the DA stage in relation to portions of the site mapped within the proximity to coastal wetland area.</p>

Directions	Consistency	Reasons for Consistency or Inconsistency
4.3 Planning for Bushfire Protection	Undetermined	The planning proposal is inconsistent with this Direction because the land is bush fire prone. The Direction provides that the Council must consult with the Commissioner of the NSW Rural Fire Service (RFS) following the issue of a Gateway determination and prior to community consultation. Until this consultation has occurred the inconsistency with the Direction is unresolved.
4.5 Acid Sulfate Soils	No – Justifiably Inconsistent	An assessment of ASS mapping shows the crest and slopes of the site, where intensification of development is proposed, are mapped with Class 5. The proposal is inconsistent with the Direction as it is not supported by an appropriate soils study. The inconsistency is considered to be minor significance as the Bellingen LEP contains adequate provisions to address potential ASS impacts at the development application stage.
6.1 Residential Zones	No – Justifiably Inconsistent	The proposal is inconsistent with this Direction as it does not encourage variety and choice of housing types to meet future needs or reduce the consumption of land for housing on the urban fringe. The Direction provides that the planning proposal may be inconsistent with the Direction where it is justified by a strategy. It is considered that the inconsistency is justified by the identification of the land within Council's endorsed LGMS for rural residential development.
9.1 Rural Zones	No – Justifiably Inconsistent	The proposal is inconsistent with this Direction as it rezones land from a rural zone to a residential zone. The Direction provides that the planning proposal may be inconsistent with the Direction where it is justified by a strategy. It is considered that the inconsistency is justified by the identification of the land within Council's endorsed LGMS for rural residential development.
9.2 Rural Lands	No – Justifiably Inconsistent	<p>The proposal is inconsistent with this Direction as it affects land within an existing rural zone and is unable to satisfy all the requirements of the Direction such as:</p> <ul style="list-style-type: none"> <li>• consider the significance of agriculture and primary production;</li> <li>• support farmers in exercising their right to farm; or</li> <li>• minimise the fragmentation of rural land and land use conflict.</li> </ul> <p>The Direction provides that the planning proposal may be inconsistent with the Direction where it is justified by a strategy. It is considered that the inconsistency is justified by the identification of the land within Council's endorsed LGMS for rural residential development.</p>

Directions	Consistency	Reasons for Consistency or Inconsistency
9.3 Oyster Aquaculture	Undetermined	The site is located within 1km of several Priority Oyster Aquaculture Areas with a number of leases within proximity to the subject site. The Direction requires consultation with the Department of Primary Industries when a planning proposal involves a change in land use which could result in adverse impacts on a POAA. Insufficient information is available to determine whether the proposal could impact these areas, however the proposed dwellings are each intended to implement on-site wastewater disposal, which may increase the nutrient load in nearby waterways. Consistency with this direction is therefore unresolved until the outcome of consultation with DPI is known.

### 3.4 State environmental planning policies (SEPPs)

With exception of SEPP (Resilience and Hazards) 2021 and SEPP (Primary Production) 2021, the planning proposal is consistent with all relevant SEPPs as discussed in the table below.

**Table 7 Assessment of planning proposal against relevant SEPPs**

SEPP (Resilience and Hazards) 2021			
Chapter	Requirement	Consistency	Reasons for Consistency or Inconsistency
Chapter 2: Coastal Management	This chapter requires consideration of impacts to the coastal environment	No – Inconsistent	The subject site is mapped as Coastal Use Area, Coastal Environment Area and Proximity Area for Coastal Wetlands. Potential impacts to these areas, particularly the adjacent coastal wetlands, are yet to be determined. Referral to DPE BCD is therefore recommended. Consideration of impacts would also be required by Council at the development application stage.
SEPP (Primary Production) 2021			
Chapter	Requirement	Consistency	Reasons for Consistency or Inconsistency
Chapter 2: Primary production and rural development	Section 2.7(a), (b) and (f) provide for the economic use and protection of agricultural lands and the consideration of impacts to oyster aquaculture	No – Inconsistent	<p>The planning proposal applies to existing zoned agricultural land and within close proximity to priority oyster aquaculture areas. The potential exists for increased land use conflict between proposed development and nearby agricultural activities.</p> <p>Where development may have an adverse effect on oyster aquaculture development or a priority oyster aquaculture area, the SEPP requires the development application to be referred to DPI for consideration and comment.</p> <p>Referral to both DPI Agriculture and DPI Fisheries is recommended to confirm the appropriateness of the proposal.</p>



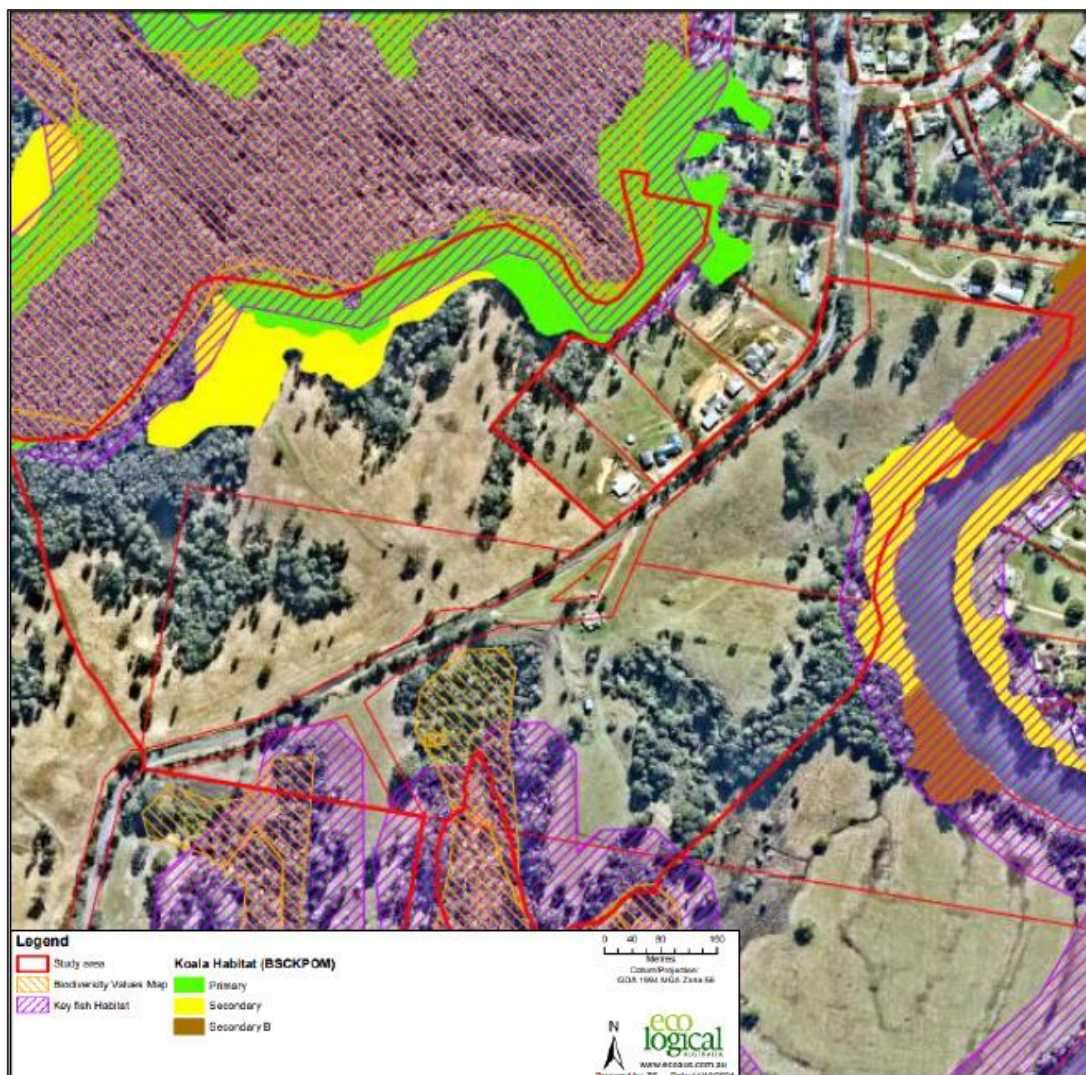
## 4 Site-specific assessment

### 4.1 Environmental

The planning proposal area includes land of High Environmental Value (**Figure 6**). An ecological assessment has been undertaken to determine the vegetation that has High Environmental Value in accordance with criteria provided by the Biodiversity Conservation Division, including:

- Coastal Wetlands listed under SEPP (Resilience and Hazards) 2021 (**Figure 7**)
- Riparian zones
- Over-cleared vegetation types
- Threatened Ecological Communities
- known and potential threatened species habitat.

Land with High Environmental Value constitutes approximately 20ha of the planning proposal area. Of this, 15.27ha, or 75% of the HEV is proposed to be protected and retained within the proposed C2 Environmental Conservation zone. This includes all areas of TEC, with the exception of a small patch (0.06 ha) of Subtropical Coastal Floodplain Forest in the east, which could also be retained and protected within the proposed lot at the development application stage. The proposed C2 zoned areas would expand upon existing adjoining C2 zoned areas beyond the study area.



**Figure 6 High Environmental Values mapping (source: planning proposal)**



The remaining portion of High Environmental Values land/native vegetation generally represents the lower condition portion of the site, such as scattered trees and regeneration. Though these are not proposed to be included in the area to be rezoned for environmental conservation, it is possible that a large portion of these areas of native vegetation can be retained within the future development of the site. Existing cleared land and paddock areas have been prioritised for development. However, as shown in Figure 7, it should be noted that some proposed lots are located on or include land mapped within the 'proximity to coastal wetland' area.

The proposed future dwellings are each intended to implement on-site wastewater disposal, which may increase the nutrient load in nearby waterways and coastal wetlands and result in adverse impacts to coastal wetland ecosystems and nearby oyster aquaculture. The site is located within 1km of several Priority Oyster Aquaculture Areas (Figure 8). While the planning proposal concludes that sufficient land is available on each proposed rural residential lot to support on-site disposal, potential downstream impacts are not discussed in detail and consultation with DPI Fisheries is recommended to determine the appropriateness of the proposal.



**Figure 7: Coastal wetlands (blue) and proximity to wetlands area (blue hatching) on the site**



**Figure 8: NSW Priority Oyster Aquaculture Areas in relation to proposed development area (red)**

## 4.2 Social and economic

The following potential social and economic impacts are associated with the proposal.

### Flood risk

Flooding of parts of the site and the access road could create social and economic implications for future residents and emergency services. While the proposed development area is above the PMF (**Figure 9**), the land becomes isolated from any nearby urban centre in a range of flood events. The lowest point of South Arm Road, which is the only access road, would be inundated with at least 0.1m of water for between 60-70 hrs in a 1% AEP event (**Figure 10**).

The access road inundation point in a 5% AEP event is categorised as flood storage with a flood risk level of H4 (Unsafe for people and vehicles). In a PMF event, the inundation area is categorised as a floodway with a risk level of H6 (Unsafe for people and vehicles; all building types considered vulnerable to failure).



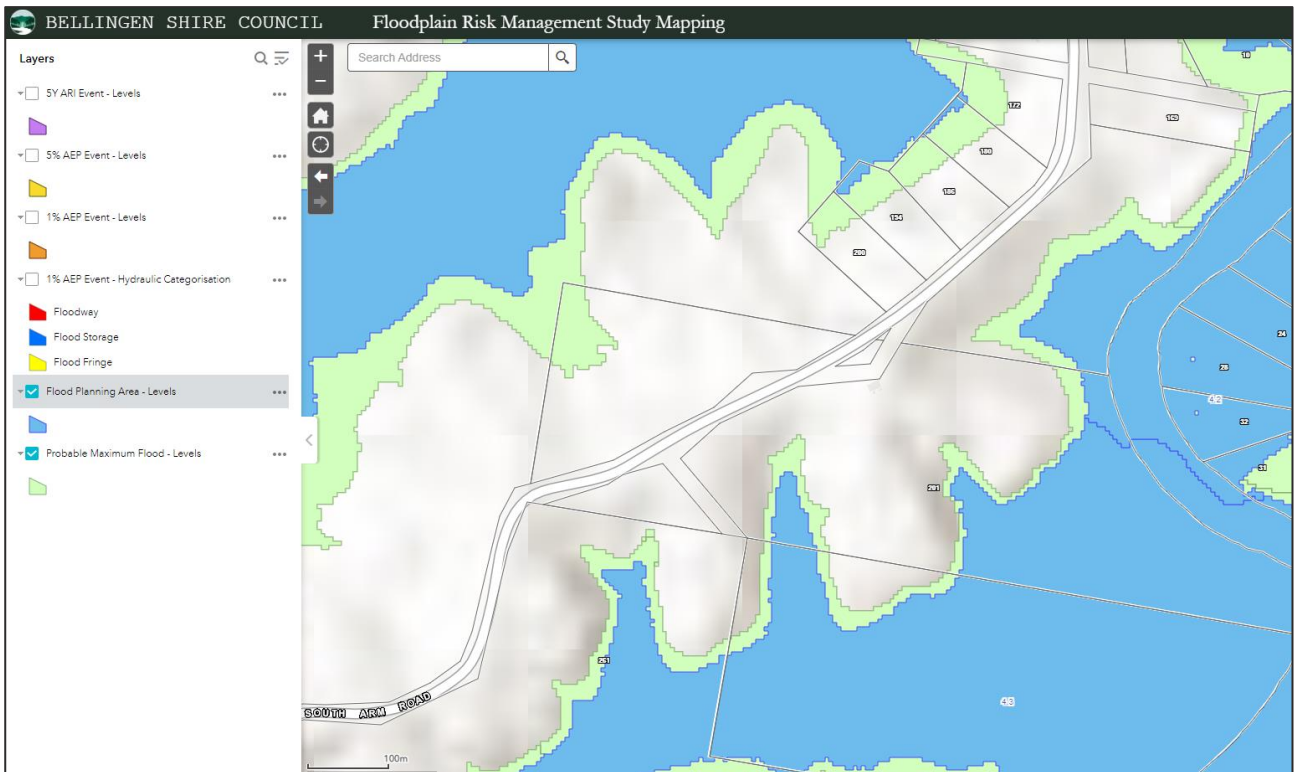


Figure 9: Planning proposal site in relation to Flood Planning Area (blue) and PMF (green) (source: Bellingen Shire Council)

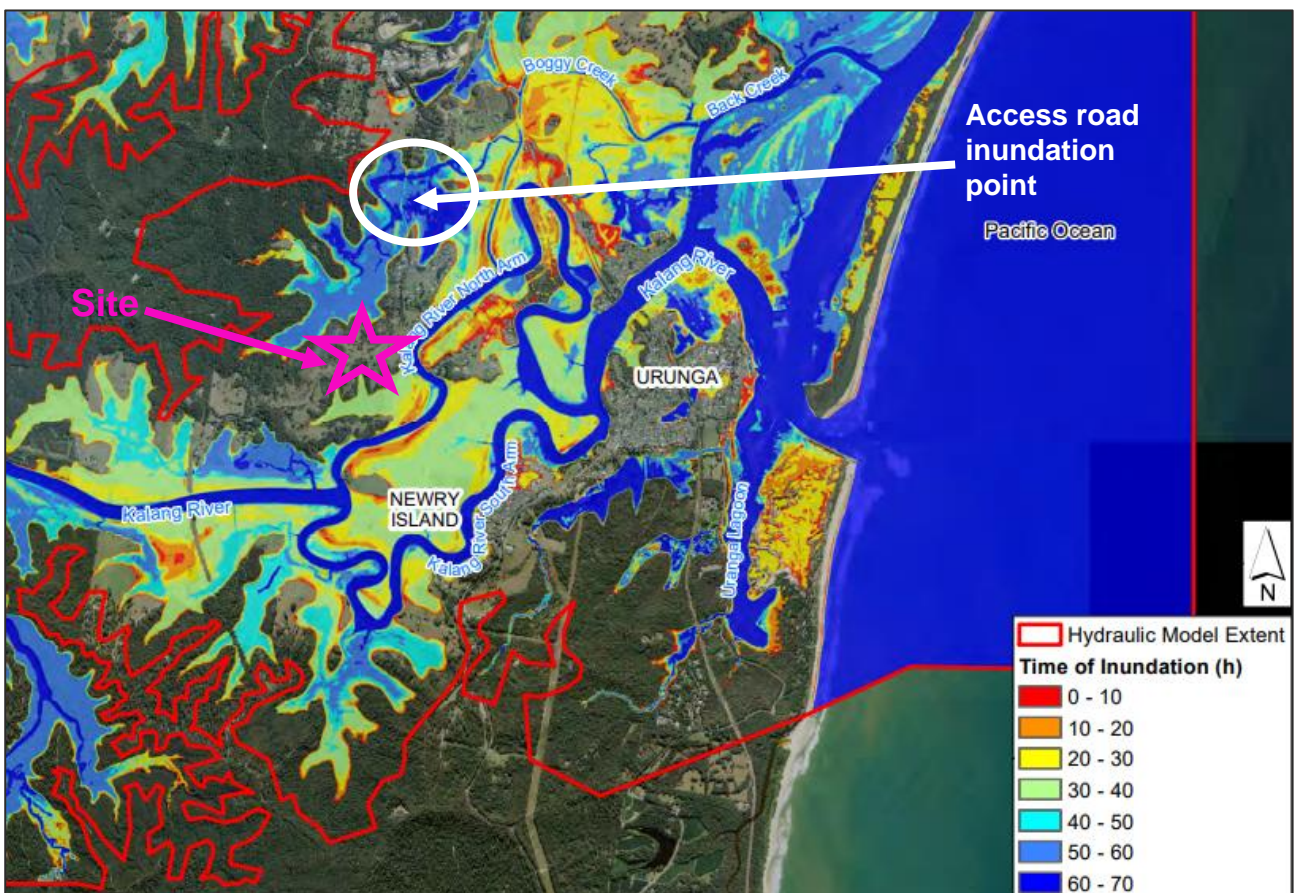


Figure 10: Time of inundation in a 1% AEP event (source: Bellingen Shire Council)

Council's Development Control Plan 2017 provides that:

- Safe access shall be provided from the subdivision to a designated flood evacuation centre, flood refuge or community of support; and
- Safe vehicular access must be provided from each development to a suitable helicopter landing site located above the PMF, which shall remain permanently cleared - such as a road cul-de-sac.

A community of support is defined in the DCP as:

*a cluster of four (4) or more residential dwellings located and interconnected by roads/driveways, all above the PMF, which would be a position to supply support to each other or nearby flood affected residents. A suitably cleared helicopter landing area shall also be identified within the community of support (see also flood refuges and evacuation centres).*

An existing cluster of 4 or more residential dwellings above the PMF already adjoins the proposed rezoning site. Council considers that future development on the planning proposal land would add to this existing community of support.

Council has indicated that there would also be some form of potential flood free access to the Pacific Highway corridor further to the south of the rezoning site, however the exact nature (vehicular / pedestrian) or the legal and practical access have not yet been determined.

Consultation with the NSW State Emergency Service will be required prior to public exhibition of the planning proposal to determine whether the specific characteristics of the site, access arrangements and provisions in Council's DCP are sufficient to enable safe occupation of the site for residential purposes.

### Bushfire risk

The site is mapped as being Bushfire Prone Land (Category 1 and buffer) (Figure 11) under Section 10.3 of the EP&A Act. Potential bushfire impacts would create social and economic implications for future residents, emergency services and Government agencies.



**Figure 11: Bushfire Prone Land mapping in relation to the site**



A Bushfire Risk Assessment has been undertaken in accordance with the provisions of the Planning for Bushfire Protection 2019 and accompanies the planning proposal. The assessment concludes that a future subdivision application would be capable of complying with the provisions relating to asset protection zones, access, services, landscaping and building construction as outlined in the policy.

Consultation with the NSW Rural Fire Service will be required prior to public exhibition of the planning proposal to assess the relative risk to future residents and dwellings and determine requirements for future development.

## 4.3 Infrastructure

There will be no impact on State or regional infrastructure or the requirement for additional funding.

Primary vehicular access to the land is via South Arm Road. Acquisition of portions of the Crown Road that dissects Lot 2 DP 1232259 is proposed, which will require further consultation with Crown Lands.

The site has electricity and telecommunications available within proximity. The land is not connected to reticulated water or sewerage and there is no proposal to extend those services to the development site.

Local infrastructure upgrades, including bushfire safety and access and further place-based investigation will be required to identify site specific requirements at the development application stage.

## 5 Consultation

### 5.1 Community

Council proposes a community consultation period of 28 calendar days.

A public exhibition period of 20 working days is considered appropriate, and forms part of the conditions of the Gateway determination.

### 5.2 Agencies

Council has nominated three public agencies to be consulted about the planning proposal.

Due to the range of issues requiring consideration, it is recommended the following agencies be consulted on the planning proposal and given 30 days to comment, unless otherwise stated:

- NSW Rural Fire Service
- NSW State Emergency Service
- DPE Biodiversity & Conservation Division
- DPI Agriculture
- DPI Fisheries (40 days)
- Crown Lands
- Coffs Harbour & District Local Aboriginal Lands Council



## 6 Timeframe

Council proposes a 9 month time frame to complete the LEP.

The Department recommends a time frame of 12 months to ensure adequate time is afforded for the extensive consultation that will be required with government agencies. In line with the Department's commitment to reduce processing times, it is recommended that if the gateway is supported it also includes conditions requiring council to exhibit and report on the proposal by specified milestone dates.

A condition to the above effect is recommended in the Gateway determination.

## 7 Local plan-making authority

Council has advised that it would like to exercise its functions as a Local Plan-Making authority, as the proposal would give effect to an endorsed local strategy.

As the planning proposal involves development of land for residential purposes which becomes isolated in flood events, the Department recommends that Council not be authorised to be the local plan-making authority for this proposal.

## 8 Assessment summary

The planning proposal is supported to proceed with conditions for the following reasons:

- the proposal is not inconsistent with the North Coast Regional Plan;
- the proposal is not inconsistent with the Bellingen Shire Local Strategic Planning Statement; and
- the proposal is recognised within the Department approved Bellingen LGMS 2007 as being potentially suitable for future rural residential development.

## 9 Recommendation

It is recommended the delegate of the Secretary:

- Agree that any inconsistencies with section 9.1 Directions 1.2 Implementation of Regional Plans, 3.2 Heritage Conservation, 4.1 Flooding, 4.5 Acid Sulfate Soils, 9.1 Rural Zones and 9.2 Rural Lands are minor or justified; and
- Note that the consistency with section 9.1 Directions 4.3 Planning for Bushfire Protection and 9.3 Oyster Aquaculture is unresolved and will require justification.

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

1. Prior to community consultation, consultation is required with the following public authorities:
  - NSW Rural Fire Service
  - NSW State Emergency Service
  - DPE Biodiversity & Conservation Division
  - DPI Agriculture
  - DPI Fisheries
  - Crown Lands
  - Coffs Harbour & District Local Aboriginal Lands Council

2. The planning proposal should be made available for community consultation for a minimum of 20 days.
3. The timeframe for completing the LEP is to be 12 months from the date of the Gateway determination.
4. Given the nature of the proposal, Council should not be authorised to be the local plan-making authority.



14/11/22

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(Signature)

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Manager, Northern Region



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