

**DEVELOPMENT APPLICATION
AND
STATEMENT OF ENVIRONMENTAL EFFECTS**

for a
Two Lot Torrens Subdivision

at
20 Bilin Road,
Myocum
Lot 13 DP 830652

Date: May 2023

B A L π N C E D
S Y S T E M S

P L A N N I N G C O N S U L T A N T S

address: P.O. Box 36 Bangalow 2479

email: planners@balancedsystems.com.au

mobile: 04 28 895 301

abn: 39 123 360 818

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1. INTRODUCTION

Section 1 - presents the circumstances of the case and outlines the structure of the report

1.1 Purpose and structure of this report

This planning report constitutes a statement of environmental effects (SEE) for a development application (DA) to Byron Shire Council seeking development consent for the following proposal:

Two Lot Torrens Subdivision

The subject property is 13 DP 830652, addressed at 20 Bilin Road, Myocum within the Byron LGA.

This report addresses the provisions of Section 4.15 of the NSW Environmental Planning and Assessment Act 1979, while the attached Bushfire Assessment Report addresses the Section 100B provisions of the NSW Rural Fires Act 1997. The proposed development application is integrated development however is not designated development.

The structure of this report comprises the following format:

Section 1 - Introduction - introduces the report and explains the circumstances of the case.

Section 2 - The site and locality - introduces the site and describes the context of the site within its immediate and broader locality.

Section 3 - The proposed development - describes the proposed development for which this application is seeking planning consent and also describes the objectives of the proposed development and outlines the operational management characteristics.

Section 4 - Statutory planning assessment - examines the consistency of the proposed development with the provisions of relevant planning policies, objectives, statutory instruments and legislation.

Appendices – the appendices contain reports that provide additional assessments relevant to the application.

1.2 Circumstances of the case

Balanced Systems Planning Consultants have been engaged by the owners to prepare a statement of environmental effects (SEE) and development application (DA) for the following:

Two Lot Torrens Subdivision

The subject site is located at 20 Bilin Road, Myocum, formally described as Lot 13 DP 830652. The site covers an area of 6.359 hectares and contains an existing dwelling, sheds and benefits from existing driveway access connecting to Bilin Road. The first part of the driveway access is shared the neighbour's property, identified as Lot 12 of DP 830652, by means of a reciprocal right of carriageway easement and the owners' consent has been provided from the neighbouring property for driveway upgrades and the use of the shared driveway to service the proposed subdivision.

The site is located mostly within Zone R5 – Large Lot Residential however also contains a small area of Zone RU2 – Rural Landscape under the Byron Local Environmental Plan 2014. The proposed subdivision is seeking consent in its proposed format pursuant to Clause 4.1D that permits subdivision with split zoning where the entire rural zone is contained within one of the proposed allotments and both allotments contain sufficient area to achieve the minimum lot size of the residential zone.

The proposal seeks to subdivide the property into two large lot residential lots, thereby generating an additional dwelling entitlement on the vacant lot as demonstrated in the attached subdivision plan and the following table:

Allotment	Area (hectares)	Status	Zoning
Lot A	3.479*	Existing dwelling building	Zone R5
Lot B	2.88*	Indicative dwelling envelope	Zone R5 (2.5 ha) Zone RU2 (0.38 ha)
Total	6.359		

* Subject to Council approval and final survey

Proposed Lot A contains the existing dwelling while Proposed Lot B contains some existing farm buildings and the proposed lot includes an indicative dwelling envelope that is considered suitable in terms of vehicular access, bushfire, wastewater management, land use conflicts and ecological impacts.

The two resulting allotments will be accessed via a proposed 'right of carriageway' along the existing access handle connecting to Bilin Road that will have reciprocal rights for both Lot A and Lot B. This is deemed to be a satisfactory outcome where it is not feasible to provide individual access frontage to Bilin Road for each allotment.

This report demonstrates, in the context of relevant Council, state government policies and objectives, and other relevant legislation, the proposal will generate minimal adverse environmental impacts while providing an additional housing opportunity within an existing large lot residential neighbourhood.

The proposal is considered to be consistent with Council strategies, and achieves the key aims and objectives of rural land uses in the Byron Shire. The report identifies the issues associated with the proposal and addresses management and mitigation where required.

2. THE SITE AND LOCALITY

Section 2 - This section of the report introduces the site and describes the context of the site within its immediate and broader locality

2.1 The region

The Far North Coast Region covers an area of 10,170 square kilometres. The Region extends from the Queensland border down the coast to Evans Head and west to Woodenbong and Tabulam. These are the traditional lands of the Bundjalung Nation.

The current population is more than 248,300 (2016) and since 2011 has been increasing by an average of 2,360 people each year. The community lives in the three regional centres of Tweed Heads, Lismore and Ballina; the five towns of Murwillumbah, Casino, Mullumbimby, Byron Bay and Kyogle; 36 rural and coastal villages; 110 small villages and numerous rural communities.

The Far North Coast is the most biologically diverse region in NSW and the third most in Australia. Through a combination of environmental features, recreational experiences, and a growing population, the Region has an opportunity to further develop as a sustainable and diverse economy while protecting and enhancing the region's unique environmental and social values.

The character of the Region has evolved from its environment and associated economic development over 150 years. From the early timber industry and agricultural beginnings to the more recent tree-changers and sea-changers, the environment has always had a major influence on the Region and its community.

The Far North Coast Regional Plan 2036 plans for an overall population of 286,100 people by 2036. This represents an additional 49,600 people or a 21% increase for the period 2011–2036.

2.2 The locality

The subject site is located approximately 3-km south-east of Mullumbimby and 13-km north-west of Cape Byron. The immediate locality is made up of large lot residential properties, larger rural land-holdings, while there is also a Multiple Occupancy 'Mevlana' to the east at the end of Bilin Road. Land to the south is comprised of open, grazing grasslands, while the property is also adjacent to the railway corridor along the southern boundary. The Leela Plantations Quarry is located farther to the south along with the Byron Resource Recovery Centre on The Manse Road.

The property has convenient access to the Pacific Motorway to the east of the site, as well as local shops and community facilities at Mullumbimby and other larger regional centres.

The subject is shown in the following map extract, while a detailed locality plan with surrounding land uses is provided within Appendix A – Subdivision Plan Set.

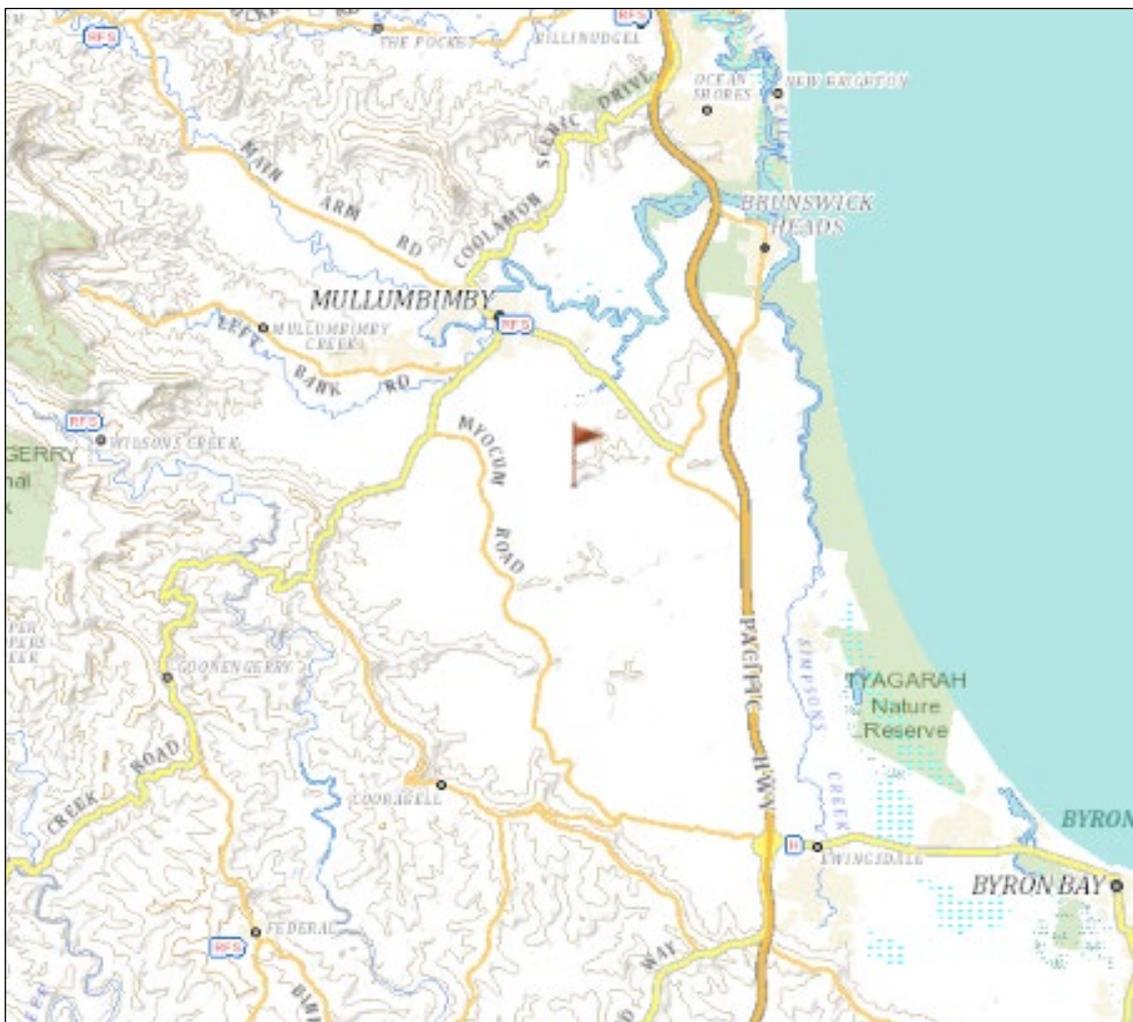


Figure 1: Wider locality (Source: NSW SIX Maps)

2.3 The site

The subject site is an irregular shaped allotment addressed at 20 Bilin Road, Myocum, lawfully described as Lot 13 of DP 830652 containing an area of 6.359 hectares. The attached subdivision plan set within Appendix A contains a site plan showing the existing circumstances of the site. The subject site contains an existing dwelling and a farm shed in the central area of the site while there are shed buildings and carports for caravan storage located in the eastern portion of the site.

The property is currently benefited and burdened by a reciprocal right of carriageway over a 20-metre-wide access corridor for approximately 120-metres, the includes a shared driveway which is also utilised by Lot 12 on the same DP. The attached Detail Survey Plan (Appendix B) depicts the existing shared driveway within the access corridor. Owner’s consent has been provided from the owner of Lot 12 for upgrade works to the driveway within the shared access corridor and for the ongoing use of the right of carriageway for servicing the additional allotment.



Figure 2: Subject Site (Source: NSW Planning Portal)

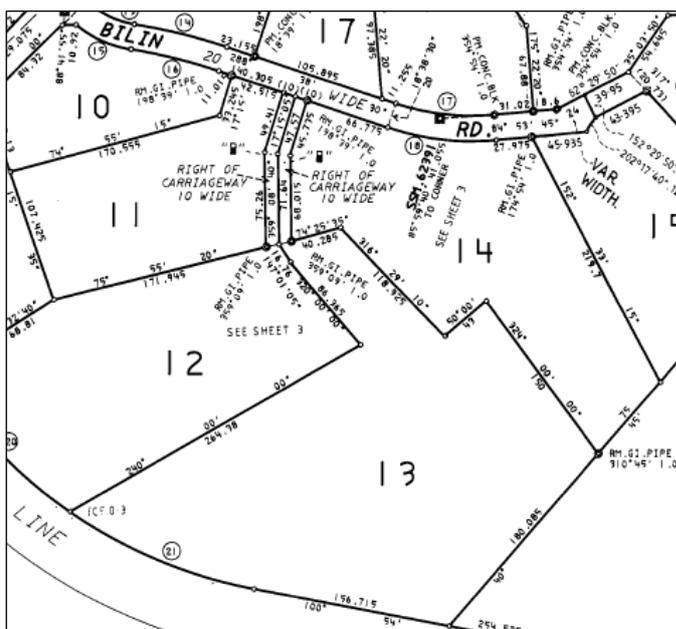


Figure 3: Extract from deposited plan

Proposed Two Lot Torrens Subdivision

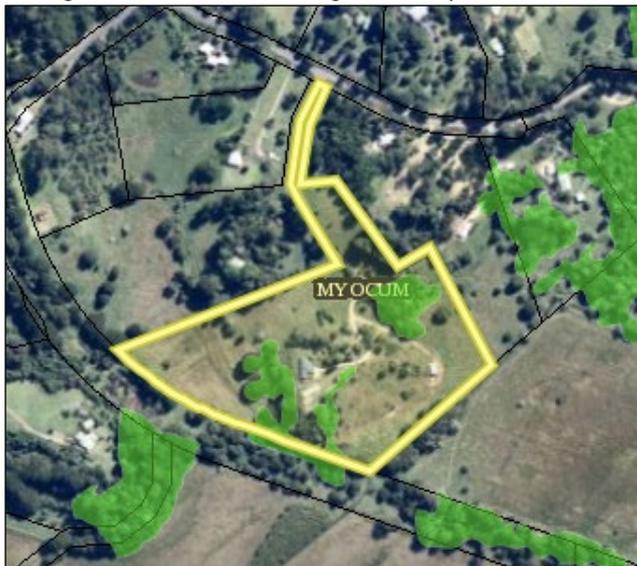
2.4 Environmental characteristics

The property contains a mosaic of open grassland, managed lawns with landscape plantings, and regrowth vegetation that includes some areas of coastal swamp forest and wet sclerophyll forest, all with high proportions of Camphor Laurel as well as some other rainforest species. The areas mapped on Council's vegetation map are not all accurate, based on there being a significant portion of weeds in some of these mapped areas as well as very sparse canopy coverage and native species diversity. An attached Vegetation Management Plan within the Bushfire Assessment, shows the proposal with bushfire Asset Protection Zones and detailed vegetation map. The site was historically completely cleared of all vegetation and so the current vegetation on the site is a mixture of planted landscape plantings & habitat plantings as well as natural regrowth in disturbed areas.

- **Vegetation Communities map**



- **High Environmental Value Vegetation map**



The subject site does not contain any areas mapped on the NSW Biodiversity Values Map (shown in purple).

- NSW Biodiversity Values Map



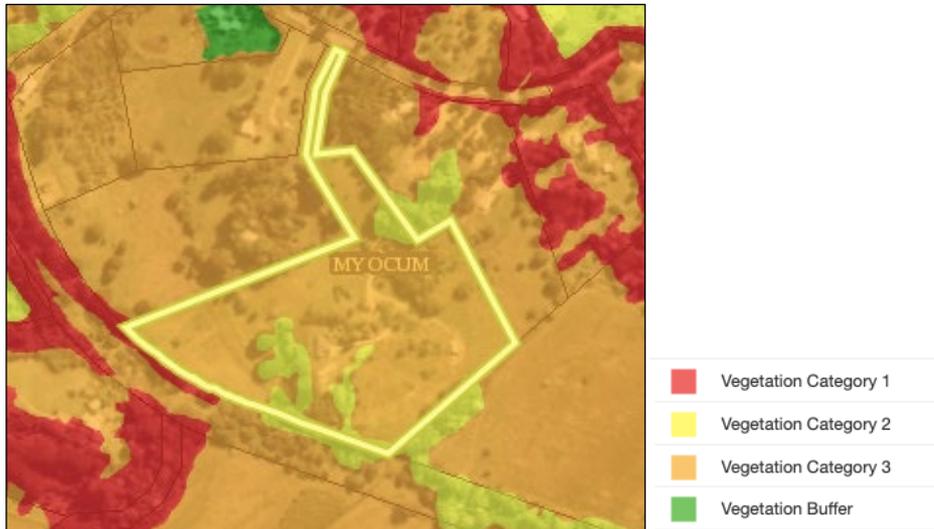
The site is mapped as containing Class 3 acid sulfate soils in the lower elevation areas of the site.

- Acid Sulfate Soils



- **Bushfire Prone Land**

The property contains bushfire prone land including Vegetation Category 1, Vegetation Category 2 and Vegetation Category 3 as mapped by the NSW State Government. These mapped areas of bushfire hazard vegetation are further explored in detail within the attached Bushfire Assessment. Appendix C provides a specialist bushfire assessment addressing the requirements of Planning for Bushfire Protection 2019.



Bushfire Prone Land (NSW Planning Portal)

- **Flood Mapping**

A small fraction of the southern corner of the site is mapped on the Flood Planning Area. The lowest land on the property subject to flooding hazard is set between approximately 4 – 5 metres AHD. The indicative dwelling envelope is set at 10 – 11 metres AHD on an elevated ridge, which is well above any flood prone areas on the site. The existing driveway is also located at elevations above any flood prone areas on the site.



Flood Planning Area (Byron Shire Council)

3. THE PROPOSED DEVELOPMENT

Section 3 - This section of the report describes the overall concept and also lists the objectives of the proposal in an environmental planning context.

3.1 Objectives of the proposed development

The objectives of the proposed two lot subdivision development application are:

- Attain development consent for the proposed two lot torrens subdivision to provide for an additional living opportunity on the existing large rural residential property;
- Provide suitable sized and shaped allotments that consider environmental characteristics of the site to ensure that each proposed allotment is capable of supporting a dwelling;
- Provide safe and suitable vehicular access for the proposed allotments;
- Demonstrate that each property can provide suitable onsite wastewater management;
- Manage bushfire risks in accordance with NSW RFS requirements for subdivision;
- Protect existing recognised onsite ecological values; and
- Maintain consistency with relevant environmental planning provisions and development controls.

3.2 The proposed development

The proposal seeks development consent from Byron Shire Council for a two lot torrens subdivision, which is further detailed in the following sub-sections and show within the attached subdivision plan set (Appendix A).

3.2.1 Proposed Lot Layout

The existing property has an area of 6.359 hectares, while the proposed two lot subdivision will have the following lot areas, with dimensions shown in the attached plan set (Appendix A). The proposed boundary alignment for the two-lot subdivision is partially the result of the land use zones map under the Byron LEP 2014, as a consequence of the RU2 zone boundary, and partially the result of other factors including existing driveway location for the main dwelling and other environmental characteristics including slope, aspect, drainage, vegetation and access.

Allotment	Area (hectares)	Status
Lot A	3.479*	Existing dwelling building
Lot B	2.88*	Indicative dwelling envelope
Total	6.359	

**Subject to Council approval and final survey*

Proposed Lot A contains the existing main dwelling and garage shed located in an elevated, central position on the property, that benefits from existing driveway access connecting to Bilin Road.

3.2.2 Indicative Dwelling Envelope

Proposed Lot B includes an indicative dwelling envelope, as depicted in the attached subdivision illustrations. This report and the attached specialist assessments demonstrate the suitability of the dwelling envelope site in terms of environmental capability to implement a future dwelling building on vacant Lot B. The proposed dwelling envelope is located within a suitable and unconstrained area of the site, in terms of ecological values and environmental hazards. The attached

specialist reports demonstrate the suitability of the proposed dwelling site in regards to wastewater management, bushfire management, contaminated land history and land use conflict risk.

3.2.3 Vehicular Access

In terms of vehicular driveway access, the following sub-sections provide a detailed break-down of each component in terms of current status and proposed upgrades:

1. Bilin Road Crossover (Council Road Reserve)

The site benefits from an existing driveway crossover connecting to Bilin Road as depicted within Appendix B. This existing sealed crossover will continue to be shared with the neighbouring Lot 12. The existing formation is sealed with good sighting distances in both directions for safe entry and exit from the site.

2. Shared Driveway with Lot 12

This first 120 metres of driveway are shared with the neighbouring Lot 12 within a 20-metre-wide access handle, provided under the following reciprocal right of carriageway easement:

2. Identity of easement or restriction secondly referred to in the abovementioned Plan:		Right of Carriageway 10 wide
<u>SCHEDULE OF LOTS AFFECTED</u>		
<u>LOTS BURDENED</u>		<u>LOTS BENEFITED</u>
Lot 6		Lots 7, 8 & 9
Lot 9		Lot 8
Lot 12		Lot 13
Lot 13		Lot 12

It is proposed that the single shared driveway access will continue to provide access for Lot 12 as well as Lot A and Lot B. A proposed new reciprocal 'right of carriageway' easement over currently Lot 13 land, will provide driveway access for both Proposed Lot A and Proposed Lot B to Bilin Road, as depicted in the attached plan set. The proposed continued shared driveway access arrangements with Lot 12 reduces the need to construct a new separate driveway and new crossover, which would also require relocation of existing power pole and power lines.

The first 120-metre section of driveway will require minor upgrades to meet NSW Planning for Bushfire Guidelines 2019 and Council design standards, that include the following:

- access driveway shall be upgraded to a minimum of 4-metres carriageway width;
- property access road is suitable for two-wheeled drive-in all-weather conditions;
- minimum vertical clearance of 4-metres to vegetation or objects;
- minimum distance between inner and outer curves is 6-metres;
- crossfall of not more than 10 degrees; and
- maximum grades for unsealed roads of 10 degrees;

3. Shared Driveway with Lot A and Lot B

The existing driveway following on from the 'right of carriageway' section with Lot 12 traverses a length of 285 metres which will provide shared access for Lot A and Lot B. The reciprocal right of carriageway is to be carried out by undertaking a new 'right of carriageway' easement, which is to be created and registered benefiting both new allotments in accordance with the Conveyancing Act 1919. Upgrades for the shared driveway include the following:

- access driveway shall be upgraded to a minimum of 4-metres carriageway width;

- passing bay is provided every 200-metres, being 20-metres long by 2-metres wide;
- minimum distance between inner and outer curves is 6-metres;
- crossfall of not more than 10 degrees; and
- maximum grades for unsealed roads of 10 degrees;

4. Driveway access for Lot A and Lot B

From the end of the shared driveway between Lot A and Lot B, private driveways servicing each allotment will be entirely contained within each lot and require the following upgrades:

- access driveway shall be upgraded to a minimum of 4-metres carriageway width;
- passing bay is provided every 200-metres, being 20-metres long by 2-metres wide;
- minimum distance between inner and outer curves is 6-metres;
- crossfall of not more than 10 degrees; and
- maximum grades for unsealed roads of 10 degrees;

3.2.4 On-site Wastewater management

The existing dwelling on proposed Lot A contains an existing, functional on-site wastewater management system.

The on-site wastewater management assessment within Appendix D demonstrates that the indicative dwelling on proposed Lot B site is capable of suitable on-site wastewater management.

3.2.5 Bushfire Management

The attached bushfire assessment report within Appendix B provides an assessment of the existing dwelling on proposed Lot A and the indicative dwelling envelope on proposed Lot B.

The report addresses the requirements of Section 100B assessment of the NSW Rural Fires Act 1997. The proposal can achieve the requirements as set out within the attached Bushfire Assessment report.

3.2.6 Vegetation Management

The proposal includes vegetation management works primarily to achieve enhanced bushfire management outcomes and also to make improvements to the indicative dwelling site to allow for future installation of an on-site wastewater management system and also improve solar access for the future dwelling.

There is a total of 27 trees to be removed, comprising mostly Camphor Laurel and Slash Pine exotic weed species with three native sally wattle trees, which are short-lived pioneer species of which the nominated ones are not ecologically significant. There are also some bamboo shrubs and very small Camphor Laurel and Slaspine saplings to be removed.

The attached Vegetation Management Plan within the Bushfire Assessment report which shows that the following vegetation will be removed that includes

Tree ID	Common Name	Category
8	Bamboo	Shrub
9	Bamboo	Shrub
10	Slash Pine	Tree
11	Slash Pine	Tree
12	Slash Pine (saplings >100, less than 10cm DBH)	N/A (small saplings)

13	Slash Pine	Tree
14	Sally Wattle	Tree
15	Sally Wattle	Tree
16	Sally Wattle	Tree
18	Slash Pine	Tree
19	Slash Pine	Tree
20	Slash Pine	Tree
58	Camphor Laurel	Tree
59	Camphor Laurel	Tree
60	Camphor Laurel	Tree
61	Camphor Laurel	Tree
62	Camphor Laurel	Tree
63	Camphor Laurel	Tree
64	Camphor Laurel	Tree
65	Camphor Laurel	Tree
66	Camphor Laurel	Tree
67	Camphor Laurel	Tree
69	Camphor Laurel	Tree
70	Camphor Laurel	Tree
71	Camphor Laurel (saplings x10, less than 10cm DBH)	N/A N/A (small saplings)
74	Camphor Laurel	Tree
77	Camphor Laurel x 2	Tree
83	Camphor Laurel	Tree
85	Camphor Laurel	Tree
86	Camphor Laurel	Tree
97	Camphor Laurel	Tree

All other native vegetation on the site will be retained including large eucalyptus species to the south-west of the existing dwelling and swamp forest vegetation to the north-east of the indicative dwelling envelope.

4. STATUTORY PLANNING ASSESSMENT

Section 4 - This section examines the consistency of the proposed development with the provisions of relevant planning policies, objectives, statutory instruments and legislation.

In accordance with the NSW Environmental Planning and Assessment Act, the proposal is considered under the following sections of this report:

- 4.1 State Environmental Planning Policies
- 4.2 Local Environmental Plan
- 4.3 Development Control Plan
- 4.4 S4.15 Evaluation

4.1 State Environmental Planning Policies

The following NSW State Environmental Planning Policies (SEPPs) are addressed:

4.1.1 SEPP (Biodiversity and Conservation) 2021

Chapter 4 Koala Habitat Protection 2021

4.1 Aims of Chapter

This Chapter aims to encourage the conservation and management of areas of natural vegetation that provide habitat for koalas to support a permanent free-living population over their present range and reverse the current trend of koala population decline.

4.2 Definitions

(1) In this Chapter—

approved koala plan of management, for land, means a koala plan of management for the land approved in accordance with section 4.14.

core koala habitat means—

- (a) an area of land which has been assessed by a suitably qualified and experienced person as being highly suitable koala habitat and where koalas are recorded as being present at the time of assessment of the land as highly suitable koala habitat, or
- (b) an area of land which has been assessed by a suitably qualified and experienced person as being highly suitable koala habitat and where koalas have been recorded as being present in the previous 18 years.

4.4 Land to which Chapter applies

(1) This Chapter applies to each local government area listed in Schedule 2.

The proposal is located within the Byron Council LGA and therefore the Koala SEPP applies.

4.8 Development assessment process—approved koala plan of management for land

(1) This section applies to land to which this Chapter applies and to which an approved koala plan of management applies.

(2) The council's determination of the development application must be consistent with the approved koala plan of management that applies to the land.

The site is identified on the Byron Coast Koala Plan of Management. The property does contain some Koala food trees on the site however these are <15% of the total canopy cover on the overall property. All Koala food tree species and other habitat tree species will be retained on the site, while Camphor Laurel and Slaspine vegetation will be removed which are recognised as a threatening ecological process as environmental weeds impacting the potential habitat areas.

The existing dwelling includes a nominated bushfire APZ that includes some of the eucalyptus tree vegetation to be retained within the APZ area. There is no native tree removal within this nominated APZ area for the existing dwelling.

The indicative dwelling envelope includes a nominated bushfire APZ area that includes the removal of some Slash Pine, Bamboo and a few Sally Wattle trees while there is no potential Koala habitat impacted by this vegetation works.

Suitable vegetation management conditions of consent can be adopted as recommended by the Byron Coast Koala Plan of Management.

4.1.2 SEPP Resilience and Hazards 2021

Chapter 2 Coastal Management

2.1 Aim of Chapter

The aim of this Chapter is to promote an integrated and co-ordinated approach to land use planning in the coastal zone in a manner consistent with the objects of the Coastal Management Act 2016, including the management objectives for each coastal management area, by—

- (a) managing development in the coastal zone and protecting the environmental assets of the coast, and*
- (b) establishing a framework for land use planning to guide decision-making in the coastal zone, and*
- (c) mapping the 4 coastal management areas that comprise the NSW coastal zone for the purpose of the definitions in the Coastal Management Act 2016.*

The subject site is not located within a coastal management mapped area and no further investigation is required.



Chapter 4 Remediation of land

4.1 Object of this Chapter

- (1) The object of this Chapter is to provide for a Statewide planning approach to the remediation of contaminated land.*
- (2) In particular, this Chapter aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment—*
 - (a) by specifying when consent is required, and when it is not required, for a remediation work, and*
 - (b) by specifying certain considerations that are relevant in rezoning land and in determining development applications in general and development applications for consent to carry out a remediation work in particular, and*
 - (c) by requiring that a remediation work meet certain standards and notification requirements*

The proposal achieves the objectives of Chapter 4 Remediation of land.

4.6 Contamination and remediation to be considered in determining development application

Appendix E provides a Preliminary Site Investigation for contaminated land assessment. It is regarded that the proposal satisfies the requirements of Chapter 4 – Remediation of Land.

4.2 Local Environmental Plan

4.2.1 Byron Local Environmental Plan

The Byron Local Environmental Plan 2014 (BLEP 2014) is the principal planning instrument applying to land within the Byron Shire.

The site is mapped as containing **Zone R5 - Large Lot Residential Zone and Zone RU2 – Rural Landscape** land (refer Section 4.2.4 Zoning) and therefore this assessment addresses the consistency of the proposal with the Byron LEP 2014. This section identifies the applicable provisions of the BLEP 2014 relating to the proposed development and discusses the consistency of the proposal with such provisions.

4.2.2 BLEP 2014 Objectives

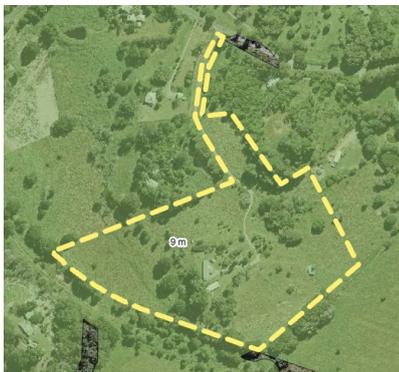
Clause 1.2 of the Byron Local Environmental Plan 2014, provides the aim and objectives of the plan.

The proposal is considered consistent with the objectives as it enhances the social and economic well-being by providing a suitable additional living opportunity without compromising environmental values. The proposed development is considered consistent with the guiding principles.

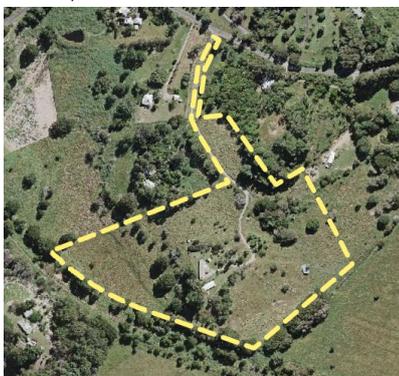
4.2.3 BLEP 2014 Maps

Relevant LEP Maps applicable to the development are as follows:

- Zoning – refer Section 4.2.4 below
- Height of Buildings – 9 metres



- Floor Space Ratio – N/A



- Drinking Water Catchment – N/A

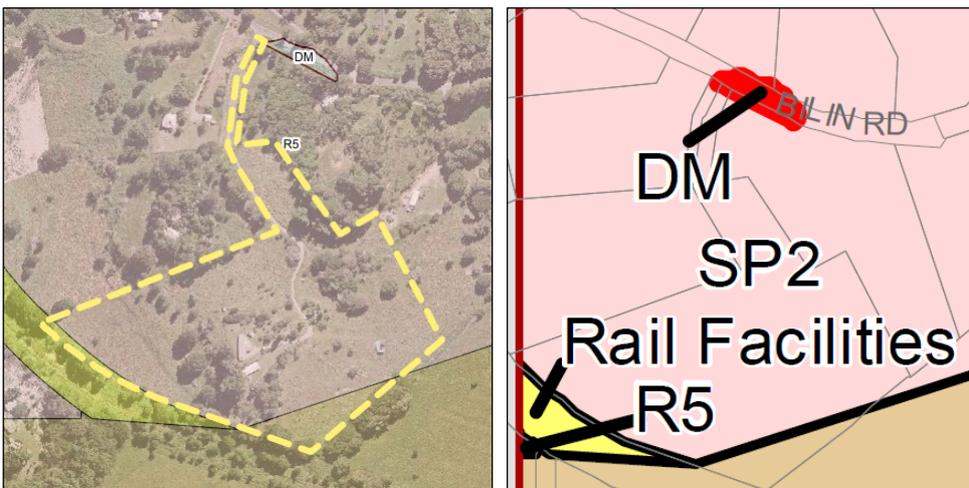


- Minimum Lot Size – 2.5 ha and 40 ha



4.2.4 BLEP 2014 Zoning

The site is predominantly mapped as Zone R5 – Large Lot Residential with a small portion of Zone RU2 - Rural Landscape the Byron LEP 2014, as depicted in the following zone map extract. Land Zoning Map - Sheet LZN_002D confirms that Zone - SP2 and the Deferred Matter area are not located on the subject site.



Byron LEP 2014 Zoning (Source NSW Planning Portal) and Extract from Land Zoning Map - Sheet LZN_002D

Zone R5 Large Lot Residential

Objectives of the zone

- *To provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality.*
- *To ensure that large residential lots do not hinder proper and orderly development of urban areas in the future.*
- *To ensure that development in the area does not unreasonably increase the demand for public services or public facilities.*
- *To minimise conflict between land uses within this zone and land used with adjoining zones.*

The proposed two lot subdivision provides an additional housing opportunity within an existing rural residential precinct whilst maintaining the existing character of the locality and having minimal adverse environmental impacts.

The proposal will not unreasonably increase the demand on public services or public facilities and is unlikely to generate any significant land use conflicts in the locality, considering the property is already zoned as large lot residential, the land is to be used in accordance with the objectives of the zone.

The proposed two lot subdivision allows the rural setting of the large lot residential zoned land to be used for its intended purpose, and the proposal is consistent with the objectives of the zone.

Zone RU2 Rural Landscape

Objectives of zone

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To maintain the rural landscape character of the land.*
- *To provide for a range of compatible land uses, including extensive agriculture.*
- *To enable the provision of tourist accommodation, facilities and other small-scale rural tourism uses associated with primary production and environmental conservation consistent with the rural character of the locality.*
- *To protect significant scenic landscapes and to minimise impacts on the scenic quality of the locality.*

The area of land zoned as RU2 – Rural Landscape will be retained on Proposed Lot B, and contains an area of land of 0.38 hectares. This size of the rural zoned land is not suitable for extensive agriculture and as further addressed under the response to clause 4.1D and will be retained in its entirety on one of the proposed lots as a ‘split-zone allotment’. It is considered that the rural landscape character of the land will not be comprised and that the scenic amenity will not be adversely impacted by the proposed two lot subdivision.

4.2.5 BLEP 2014 Provisions

This section identifies special LEP provisions that are applicable to this development application.

Byron LEP 2014 Provisions

Clause 4.1 Minimum subdivision lot size

- (1) *The objectives of this clause are as follows—*
- (a) *to ensure that lot sizes are compatible with local environmental values and constraints,*
 - (b) *to facilitate efficient use of land resources for residential and other human purposes*
- (2) *This clause applies to a subdivision of any land shown on the Lot Size Map that requires development consent and that is carried out after the commencement of this Plan.*
- (3) *The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land*

4) *This clause does not apply in relation to the subdivision of any land—*

- (a) *by the registration of a strata plan or strata plan of subdivision under the Strata Schemes Development Act 2015, or*
- (b) *by any kind of subdivision under the Community Land Development Act 1989.*

Proposed Lot A entirely contains Zone R5 where a minimum lot size of 2.5-ha is prescribed. As demonstrated in the plan set (Appendix A – Illustration 4), proposed Lot A has a proposed lot size of 3.479-hectares and therefore easily complies with the minimum lot size requirement.

Proposed Lot B contains both Zone R5 and Zone RU2 zoned land and has a proposed lot size of 2.88-hectares, with a 2.5-ha portion of zone R5 and a 0.38-ha portion of zone RU2, which is well below the minimum lot size of 40-ha.

The proposal therefore seeks development consent pursuant to the Byron LEP 2014 Clause 4.1D – Exceptions to minimum lot sizes for certain split zones.

The proposal does achieve the Large Lot Residential - Minimum Lot Size, considering that both Lot A and Lot B contain at least 2.5-hectares of Zone R5 land.

Clause 4.1D Exceptions to minimum lot sizes for certain split zones

The objectives of this clause are as follows—

- (a) *to provide for the subdivision of lots that are within more than one zone but cannot be subdivided under clause 4.1,*
- (b) *to ensure that the subdivision occurs in a manner that promotes suitable land use and development.*

The proposal is seeking development consent pursuant to Clause 4.1D, considering the zoning characteristics of the site and the proposed subdivision layout. The proposal is consistent in achieving the objectives of the clause, by proposing a subdivision of an existing single allotment into two lots, that contains more than one land use zone, in this case being Zone R5 and Zone RU2.

The area of Zone RU2 is an area of 0.38 hectares on proposed Lot B, and does not comply with Clause 4.1 minimum lot size of 40-ha. The proposal is seeking development consent pursuant to Clause 4.1D, and as demonstrated within this DA submission, the proposal is considered to be a suitable land use and scale of development that is consistent with the objectives of each zone.

(2) *This clause applies to each lot (an **original lot**) that contains—*

- (a) *land in a residential, business or industrial zone, and*
- (b) *land in Zone RUI Primary Production, Zone RU2 Rural Landscape, Zone SP3 Tourist, Zone E2 Environmental Conservation or Zone E3 Environmental Management.*

The existing (original) lot contains mostly Zone R5 – Large Lot Residential and a small portion of Zone RU2 – Rural Landscape, as depicted within the attached Subdivision Plan Set (Appendix A).

(3) *Despite clause 4.1, development consent may be granted to subdivide an original lot to create other lots (the **resulting lots**) if—*

- (a) *one of the resulting lots will contain—*
 - (i) *land in a residential, business or industrial zone that has an area that is not less than the minimum size shown on the Lot Size Map in relation to that land, and*
 - (ii) *all of the land in Zone RUI Primary Production, Zone RU2 Rural Landscape, Zone SP3 Tourist, Zone E2 Environmental Conservation or Zone E3 Environmental Management that was in the original lot, and*

The subdivision seeks development consent in accordance Clause 4.1D considering that proposed Lot B contains 2.5 hectares of zone R5 – Large Lot Residential and 0.38-ha of zone RU2 – Rural landscape land. The area of R5 zoned land is no less than the minimum lot size for that corresponding zone and all of the RU2 zoned land from the original lot is contained within proposed Lot B and none is contained on proposed Lot A.

(b) all other resulting lots will contain land that has an area that is not less than the minimum size shown on the Lot Size Map in relation to that land.

In accordance with this clause, proposed Lot A complies with the minimum lot size prescribed for the Zone R5 being 3.479 hectares in size, well above the 2.5 hectares minimum lot size.

Clause 6.1 Acid sulfate soils

The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage.

The overall site contains Class 3 potential acid sulfate soils. The proposed subdivision does not include any physical works of more than 1 metre below the natural ground surface or any works that are likely to lower the water table in any location that is mapped as potential acid sulfate soils. The proposed indicative dwelling envelope on Lot B is located well above the potential acid sulfate soils mapped area, and a specialist assessment is not deemed necessary in this instance.

Clause 6.3 Flood planning

The objectives of this clause are as follows—

- (a) to minimise the flood risk to life and property associated with the use of land,*
- (b) to allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change,*
- (c) to avoid significant adverse impacts on flood behaviour and the environment.*

The site contains an area of mapped flood prone land in the south-eastern portion of the site. The proposed two lot subdivision does not result in an increased flood risk to life or property as proposed Lot B contains a suitable dwelling site that is in an elevated location that is not subject to flood hazard. The indicative dwelling envelope on proposed Lot B is set at an elevation of 10-11 metres AHD, which is well above any potential flood area. The access driveway is also located well above any flood prone land and there is available access to a public road in times of flood events.

Clause 6.6 Essential services

Development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required—

- (a) the supply of water,*

Water supply will be provided via roof capture and onsite water tank storage.

(b) the supply of electricity,

The site has existing access to electricity grid services. The property is already serviced by the essential energy grid network via poles & wires as well as underground power supply.

(c) the disposal and management of sewage,

The property can facilitate suitable on-site management of sewage. Appendix D contains an assessment for the capability of Proposed Lot B which contains an indicative dwelling envelope, while Proposed Lot A contains the existing dwelling with an existing onsite sewage management system.

(d) stormwater drainage or on-site conservation,

The site contains sufficient room for management of stormwater on the property. Any future dwelling on the vacant allotment will be required to adhere to Council's requirements for stormwater management on rural properties.

(e) suitable vehicular access

Access is provided via Bilin Road, as demonstrated in the attached plan set, which will require some minor upgrades to provide compliant access with Byron Shire Council design standards and NSW RFS design guidelines.

Owner's consent is provided from the neighbouring allotment property owner for undertaking driveway upgrade works within the existing reciprocal right of carriage way for the first 120-metres as well as permitting the ongoing use of this shared driveway to service the subdivision.

4.3 Development Control Plan

The Byron Development Control Plan 2014 applies to the proposed development located within a Byron LEP 2014 zoned area.

4.3.1 Byron Development Control Plan 2014

Relevant provisions of this DCP are identified below, together with a statement of the consistency of the proposed development with such provisions.

Development Control	Comment	Complies
Chapter BI: Biodiversity	<p>The proposed subdivision can achieve all required setbacks for the proposed indicative dwelling envelope:</p> <ul style="list-style-type: none"> >30 metres away from Coastal Swamp Forest EEC to the north. >20 metres away from any old-growth vegetation, the site was historically cleared land. There are not any recognised important wetlands on the site. >20 metres away from any wetland areas. >20 metres away from any bushland on slopes >18 degrees There are not identified threatened species on the subject site and no species sightings on the NSW Bionet Search. >20 metres away from any potential Koala habitat areas on the site including any specific Koala food trees. Not located within a waterway riparian buffer. Not located nearby to a flying fox camp or near any raptor nests. >10 metres from any large native trees. There is some proposed vegetation removal around the site of the indicative dwelling envelope, including slash pine, bamboo and a small number of Sally Wattle trees, which are native trees however they are not in ideal health being short lived trees and are extremely common on the site. <p>The existing dwelling on the site is included within the attached bushfire assessment, which nominates improved bushfire management provisions for the existing dwelling including a bushfire asset protection zone. This existing dwelling will not require the removal of any native vegetation to implement the bushfire management provisions with all of the existing native vegetation to the south-west of the dwelling to be retained as part of an acceptable 15% canopy cover within a bushfire APZ. Some of the vegetation will be removed within this area including Camphor Laurel, Lantana, Tobacco Bush, Exotic Grasses and other weed species.</p> <p>Overall, the proposal does not require the removal of any mapped native HEV vegetation and will not adversely impact upon important native ecological values recognised on the site.</p>	Yes

Development Control	Comment	Complies
Chapter B3: Services	Essential servicing requirements for the proposed two-lot subdivision are detailed within Clause 6.6 – Essential Services.	Yes
Chapter B4: Traffic Planning, Vehicle Parking, Circulation and Access	<p>The proposal results in an additional dwelling entitlement that will generate a small increase in the volume of traffic to the site. It is considered that the minor increase in traffic associated with the proposal will not result in an overburdened local road network.</p> <p>The proposed subdivision requires some driveway upgrade works to provide a bushfire and council compliant driveway, as detailed within Section 3.2.3 of this report.</p>	Yes
Chapter B6: Buffers and Minimising Land Use Conflicts	The attached LUCRA report within Appendix F provides a detailed assessment of the proposal considering the requirements of Chapter B6.	Yes
Chapter B8 Waste Minimisation and Management	The future dwelling on the new allotment will utilise Council waste collection services, with bin pick up from Bilin Road.	Yes
Chapter D6 - Subdivision		
D6.2.1 Subdivision Guidelines	<p>The attached illustrations and specialist reports demonstrate that the proposed subdivision complies with the objectives of the provision.</p> <p>The proposed lot layout has considered the sites environmental features such as; topography, vegetation, soils, climate, drainage and watercourses.</p> <p>The proposed design has also considered the sites human made features including; access, road networks, services and the existing built environment in the locality.</p> <p>A site and context analysis are provided within the illustrations in Appendix A.</p> <p>The existing dwelling and the indicative dwelling envelope both have suitable aspect for solar access and climate control.</p> <p>The proposal can implement successful bushfire management as discussed in the attached Bushfire Assessment report.</p> <p>The proposal includes the removal of some vegetation with it mostly being exotic weed species and ecological values are protected on the site.</p> <p>The proposed indicative dwelling envelope is not located within the vicinity of any natural waterbodies or riparian corridors.</p> <p>Stormwater can be successfully managed onsite.</p>	Yes

Development Control	Comment	Complies
	<p>The site is not subject to significant land slip hazards or slope instability. A geotechnical report will be provided at the Subdivision Certificate stage.</p> <p>The property contains some areas which are subject to flood hazard while both resulting allotments have adequate flood free land and access is also not subject to flooding hazard.</p> <p>The vacant allotment can be provided with all necessary services.</p>	
<p>D6.3.1 Lot Size, Shape and Configuration</p>	<p>The proposed subdivision complies with the objectives and requirements of the provision.</p> <p>The proposed indicative dwelling envelope can be suitably accessed and is not affected by significant environmental constraints.</p> <p>The indicative dwelling envelope is not at or below flood prone land areas on the site.</p> <p>Both of the resulting allotments achieve the minimum lot size requirements of Large Lot Residential zoned land.</p>	<p>Yes</p>
<p>D6.3.2 Stormwater Management</p>	<p>The proposal will not significantly change the stormwater flow and drainage on the property.</p> <p>Stormwater management for the vacant lot can be designed and implemented during the future dwelling development application stage.</p> <p>Any driveway upgrades may require stormwater management upgrades included in the final design.</p>	<p>Yes</p>
<p>D6.3.3 Road Design and Construction</p>	<p>The proposal requires some minor driveway upgrade works, however does not require the construction of any new roads. All driveway upgrades will be done to comply with Planning for Bushfire Guidelines 2019 and the Northern Rivers Design Construction Manual.</p>	<p>Yes</p>
<p>D6.3.4 Sewage Management</p>	<p>The dwelling on proposed Lot A contains an existing approved on-site wastewater management system.</p> <p>The attached specialist report details that the indicative dwelling site on proposed Lot B can be adequately serviced by an On-site wastewater management system.</p>	<p>Yes</p>

4.4 S4.15 Evaluation

This section assesses the consistency of the application in relation to the provisions of Section 4.15 Evaluation of the Environmental Planning and Assessment Act, 1979 (as amended).

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

(1)(a) the provisions of:

(i) any environmental planning instrument, and

(ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and

(iii) any development control plan, and

(iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and

(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph),

(v) (Repealed)

that apply to the land to which the development application relates,

The relevant Environmental Planning Instruments (EPIs) are addressed as follows:

Applicable SEPPs - refer to section 4.1 of this report.

Local Environmental Plan - refer to section 4.2 of this report.

Development Control Plan - refer to section 4.3 of this report.

In summary, the proposed two lot subdivision is considered consistent with the aims of the LEP, the applicable zone objectives and LEP provisions.

The proposal is also considered consistent with the aims, objectives and intent of the applicable DCP controls.

This report also demonstrates that the proposal is consistent with the objectives and relevant sections of any NSW State Environmental Planning Policy.

The proposal has addressed the requirements of the NSW Rural Fires Act 1997 and also addresses the NSW BC Act 2016.

The attached illustrations and relevant assessment report demonstrate the proposed subdivision can address all of the required planning provisions.

(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,

- **Natural Ecosystems**

The proposal does not pose any significant impacts on the natural ecosystems or any threatened species of ecological communities. The removal of vegetation on the site has been carefully considered and targets exotic weed species while protecting native ecosystems.

- **Rural Character and Scenic Amenity**

The proposed subdivision and eventual new dwelling on the site will not adversely impact upon the rural character and scenic amenity of the rural locality.

- **Land Use Conflicts**

The proposal to create two lots is unlikely to generate any land use conflicts within the locality or with adjoining land when considering the existing zoning of the land, the location of the existing dwelling and other dwellings in the immediate locality.

- **Traffic Impacts and Access**

Access to the site is via an existing driveway connecting to Bilin Road, with a new right of carriage way proposed to allow for shared access arrangements for Lot A and Lot B. The new dwelling entitlement will not generate any substantial adverse impact on the local traffic network.

- **Wastewater Management**

The resulting new lot is able to achieve suitable long-term management of wastewater as demonstrated within the attached specialist report.

- **Social and Economic**

The proposal will result in positive social and economic outcomes for the local community by providing an additional dwelling opportunity in an area where there is a high need for sustainable housing.

- **Rural Living Amenity**

The two-lot subdivision is of a small-scale development type, which allows the land zoning to be utilised for the intentions it was created for, that is to permit suitable scaled residential development while not resulting in adverse impacts on the rural living amenity of the surrounding area. The proposal is not seen as being an overdevelopment of the site and is unlikely to adversely impact upon nearby land uses.

(c) the suitability of the site for the development,

This report and the accompanying specialist assessments demonstrate the suitability of the site for the proposed subdivision.

(d) any submissions made in accordance with this Act or the regulations,

Council may place the application on public exhibition and seek submissions.

(e) the public interest.

The proposal generates two rural residential lots without creating significant adverse impacts to the site or the locality, the proposal is considered in the public interest.

4.5 BC Act 2016

The subject site does not contain any areas mapped on the NSW Biodiversity Values Map, and therefore there is no trigger into the biodiversity offset scheme from impacts on the NSW BV map.

There is vegetation proposed to be removed, with >95% of the trees to be removed being exotic weed species, therefore the trigger of entry into the biodiversity offset scheme from native vegetation clearing thresholds.

The BC Act requires a test of significance (five-part test) when assessing the development proposal will significantly affect threatened species, ecological communities or their habitats. In this circumstance, a general 5-part-test is conducted below in terms of impact on ecological values on the site including threatened species and ecological communities.

Assessment of significance (5-part test) Test of significance – excerpt from section 7.3

1. The following is to be taken into account for the purposes of determining whether a proposed development or activity is likely to significantly affect threatened species or ecological communities, or their habitats:

a. in the case of a threatened species, whether the proposed development or activity is likely to have an adverse effect on the life cycle of the species such that a viable local population of the species is likely to be placed at risk of extinction,

The proposed does not generate any significant environmental impacts on any threatened flora or fauna species that would make a local population unviable.

b. in the case of an endangered ecological community or critically endangered ecological community, whether the proposed development or activity:

i. is likely to have an adverse effect on the extent of the ecological community such that its local occurrence is likely to be placed at risk of extinction, or

ii. is likely to substantially and adversely modify the composition of the ecological community such that its local occurrence is likely to be placed at risk of extinction,

The proposed two lot subdivision does not raise any issues in regards to generating adverse impacts on any threatened ecological community. All potential threatened ecological communities on the site are protected. The proposal will not result in increased risk of an ecological community placed at risk of extinction.

c. in relation to the habitat of a threatened species or ecological community:

i. the extent to which habitat is likely to be removed or modified as a result of the proposed development or activity, and

ii. whether an area of habitat is likely to become fragmented or isolated from other areas of habitat as a result of the proposed development or activity, and

There are only three native trees seeking consent to be removed as part of the development application, being 3 x Sally Wattle trees of poor condition and being regrowth trees of not significant ecological values, isolated within a grassed paddock area.

iii. the importance of the habitat to be removed, modified, fragmented or isolated to the long-term survival of the species or ecological community in the locality,

The proposal will not result in native habitat areas being removed, modified, fragmented or isolated with tree removal involving exotic weed species including Camphor Laurel and Slash Pine, all important native trees will be protected as part of the subdivision.

d. whether the proposed development or activity is likely to have an adverse effect on any declared area of outstanding biodiversity value (either directly or indirectly),

The proposal is not located in an area where there are any direct or indirect impacts on declared areas of outstanding biodiversity value.

e. whether the proposed development or activity is or is part of a key threatening process or is likely to increase the impact of a key threatening process.

The proposal does not comprise any components which are listed as a key threatening process as listed under Schedule 4 of the BC Act 2016.

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APPENDIX A – Subdivision Plan Set

APPENDIX B – Driveway Survey Plan

APPENDIX C – Bushfire Assessment Report

APPENDIX D - On-site Wastewater Management Capability Assessment

APPENDIX E – Contamination Assessment

APPENDIX F – LUCRA