

EUROBODALLA SHIRE COUNCIL
DEVELOPMENT APPLICATION ASSESSMENT REPORT

DA Description: Concept approval for a dwelling house		
Property Address: Youngs Road AKOLELE NSW 2546; Lot 1 DP 826655		
Registration Date: 7 July 2025		Estimated Cost: \$15,000.00
Internal Referrals: No	External Referrals: No	PIN: 26473 ; File No:
Notification: Yes	Advertising: No	
Variations: Yes LEP 4.2A- Clause 4.6 not supported.	Submissions: None	Assessing Officer: Kristy Robinson

Local Environmental Plan:	Eurobodalla Local Environmental Plan 2012
Land Use Zoning:	RU1 Primary Production
Development Control Plan:	Rural, R5 & C4 DCP
Other Land Attributes:	Eurobodalla Local Environmental Plan 2012 RU1 Primary Production SEPP (Resilience & Hazards) 2021 Coastal Whole Lot Dwelling NOT permitted - RURAL LEP 1987 LLS authorises clearing ELEM 2012 CI 4.1 Min Lot Size = 100ha applies Rural, R5 & C4 DCP Native Vegetation & Bio Corridors apply Bush Fire prone land - YES SEPP (Resilience & Hazards) 2021- Coastal Wetlands

Recommendation: Refuse

A. PROPOSED DEVELOPMENT:

Council is in receipt of the above application for Concept approval for a dwelling house at Youngs Road AKOLELE NSW 2546.

The proposal consists of:

- Concept approval for a dwelling-house.

B. BACKGROUND:

The development History of this site is as follows:

Application No	Description	Decision	Decision Date

The lot was created as a result of a two lot subdivision approved on 31 August 1990. The subdivision was approved in 1990 and registered in 1992. It is 2.04Ha in size. The application was approved by Council at a Council meeting on 27 August 1990 via a SEPP 1 objection against the min 40Ha lot size required under the Eurobodalla Rural LEP 1987. The SEPP 1 objection was concurred by the NSW Department of Planning. Lot 1 was approved on the condition that there would be a long term lease arrangement for agricultural purposes (palm plantation). A condition of consent states *'The subdivision is approved for the purposes of lease only'*. The consent also states that *'With registration of the plan of survey, under the 1(a) rural zone in Rural Local*

Environmental Plan 1987, a dwelling application will not be approved on either of the proposed lots'. The plans also included a proposed shed to be located on the land associated with the proposed agricultural use. The 1990 consent for two lot rural subdivision is provided below:

88/1006/S

Mr P Pritchett (2008)/264

31 August 1990

Malouf, Maher & Bisits
586 Crown Street
SURREY HILLS NSW 2010

Dear Sir/Madam,

**RE: NOTICE TO APPLICANT OF DETERMINATION OF A
DEVELOPMENT APPLICATION FOR TWO LOT RURAL SUBDIVISION**

Pursuant to Section 92 of the Environmental Planning and Assessment Act 1979 and Section 331 of the Local Government Act 1919, notice is hereby given of the determination of the consent authority of the development application number 89.600 dated 25 July 1990 and described by plan number 90-417 relating to the land described as Portion 178 Parish of Narooma At Central Tilba.

The development application has been determined by granting of consent subject to the following conditions of subdivision (as amended October, 1989).

51.1 Create drainage, water, sewer and service easements where required and/or as directed by Council free of all costs to Council.
Reason: Adequate access to, and protection of, services will be ensured with the creation of easements over existing and proposed services.

62.2 Obtain consent from the Lands Department prior to any work being carried out on the Crown reserved roads.
Reason: Approval and compliance with the standards of the Lands Department is required for construction on Crown reserved roads utilised as access to the proposed subdivision.

62.3 Submission of a Plan of Survey by a registered surveyor together with a plan printing fee as set by Council from time to time and currently \$18 per original sheet of the Plan of Survey.
Reason: The Plan of Survey required by the Land Titles Office must be certified by the Council Clerk as having satisfied the requirements of the Local Government Act, 1919.

Council's plan printing fee covers the cost of providing copies of the Plan of Survey to relevant internal Council Departments and to Government Departments as required.

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and subject to:

- (a) The subdivision is approved for the purposes of lease only.
- (b) The applicant pay the cost of registration of the plan of subdivision which Council will carry out.
- (c) The applicant shall consent to the lodgement of an instrument under Section 88E of the Conveyancing Act, to preclude the transfer of either lot in the subdivision other than with the other lot in the subdivision or by consolidation with adjoining lots.

Additional Information:

1. The applicant is advised that, with registration with the Land Titles Office of the Plan of Survey required under this approval and the corresponding change in description of the land, current approval for a dwelling on Portion 178 Parish of Narooma (the subject land) will lapse.

Construction of the approved dwelling in the approved location should be substantially commenced prior to registration of the plan of survey for approval to remain valid.

2. With registration of the plan of survey, under the 1(a) rural zone in Rural Local Environmental Plan 1987, a dwelling application will not be approved on either of the proposed lots.

Endorsement of Date of Consent: 31 August 1990

Notes

- * To ascertain the date upon which the consent becomes effective, refer to Section 93 of the Act.
- * To ascertain the extent to which the consent is liable to lapse, refer to Section 99 of the Act.
- * Section 97 of the Act confers on an applicant who is dissatisfied with the determination of the consent authority a right of appeal to the Land and Environment Court exercisable within twelve (12) months after receipt of this notice.

Yours faithfully,
A. W. RATCLIFFE,
Shire Clerk.

Per: 

THIS IS NOT A BUILDING PERMIT.

A dwelling entitlement search was undertaken and advice was issued to the applicant on 4 October 2024. The applicant was advised that the site does not have a dwelling entitlement.



Our Reference: DES0004/25

4 October 2024

Candor Town Planning & Development Professionals
2 Old Mossy Point Road
JEREMADRA NSW 2536

Dear Rebecca

Dwelling Entitlement Search
Lot 1 DP 826655 - Youngs Road AKOLELE NSW 2546

Reference is made to your correspondence dated 20 September 2024 regarding whether the above-mentioned property enjoys the benefit of a "dwelling entitlement".

The property is currently zoned RU1 Primary Production under the Eurobodalla Local Environmental Plan (LEP) 2012.

This property does not satisfy any of the provisions set out in Clause 4.2A of the LEP which relate to the permitting of dwelling houses on the property.

Lot 1 DP 826655 was created via an approved 2 lot subdivision on 31 August 1990. A condition of consent states the subdivision is approved for the purposes of lease only. Lot 1 was approved on the pretext of a long-term lease arrangement for agricultural lease (palm plantation).

Therefore, Council cannot approve a development application for a dwelling house or a dual occupancy on the property.

If you require further information, please do not hesitate to contact the Development Helpdesk on 02 4474 1231.

Yours sincerely

A handwritten signature in black ink, appearing to read "R. Johnston", is positioned above the printed name.

Renee Johnston
Duty Development Officer

C. SITE CONTEXT:

The site was inspected on 18 August.

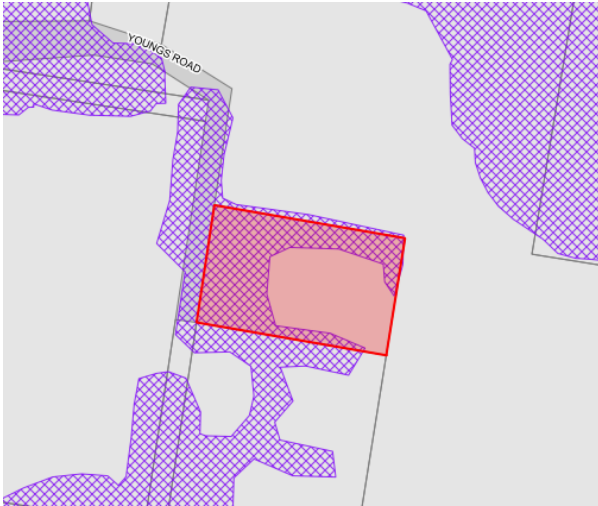
The site is a rural property, regular shaped and 2.04Ha in size. The land is sloping falling from a knoll at RL30 to RL20 (about 10m) from the centre of the site to each boundary. There is an existing shed (farm building) located on the knoll that appears to have been lived in at some point. Access is via Youngs Road and existing Crown land via a gate and unformed driveway. The site is not connected to reticulated sewer or water. An electricity line traverses the site.

Surrounding lots are characterised by rural properties zoned RU1 Primary Production. There are some dwelling-houses on lots in the vicinity that were approved under existing holding provisions in Clause 4.2A of the LEP as they are historic lots. There is a wetland to the north/north east of the site.

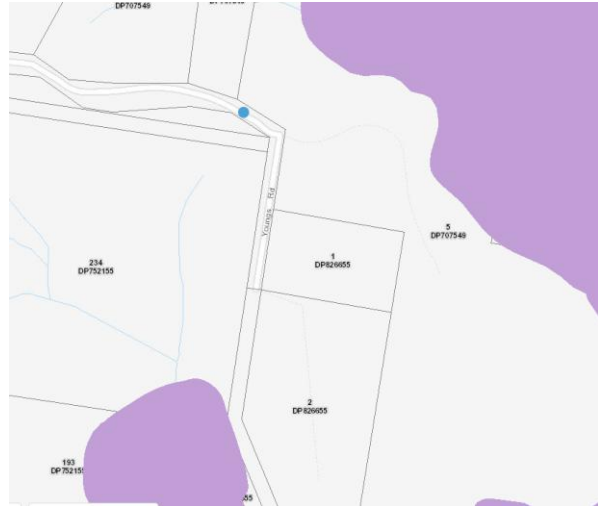
The site is affected by the following constraints, none of which will impede the development:

- Bushfire prone
- Council's Native Vegetation Map
- Coastal Zone – Coastal Environment Area and proximity to coastal wetland

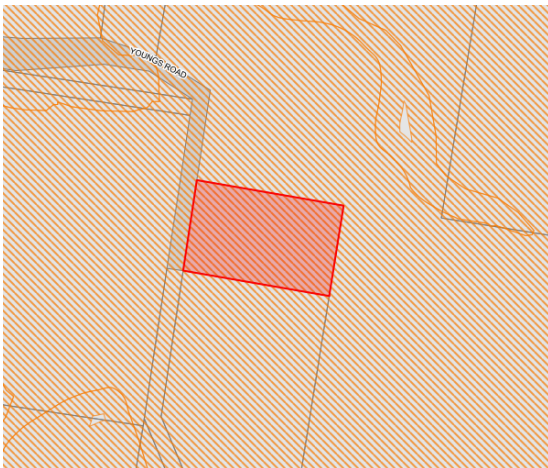




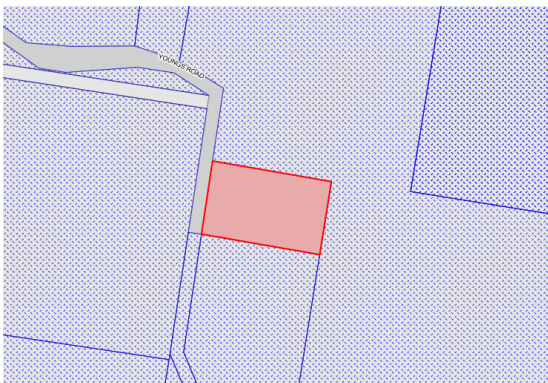
Native Vegetation map



Biodiversity Values map



Bushfire map



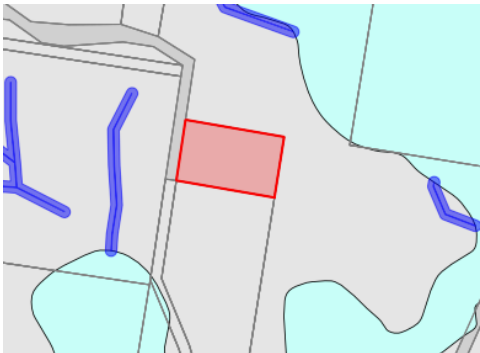
Flooding – not mapped



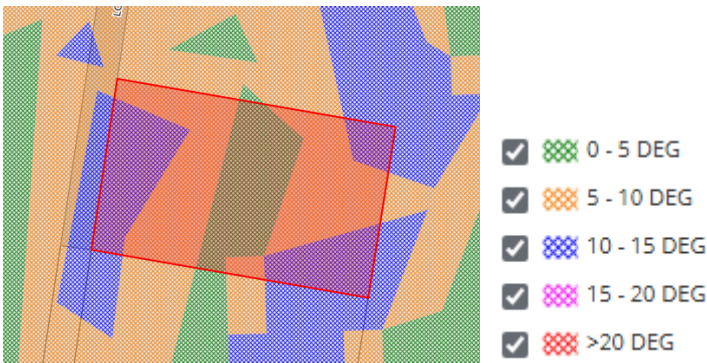
Minimum lot size – AD = 100Ha



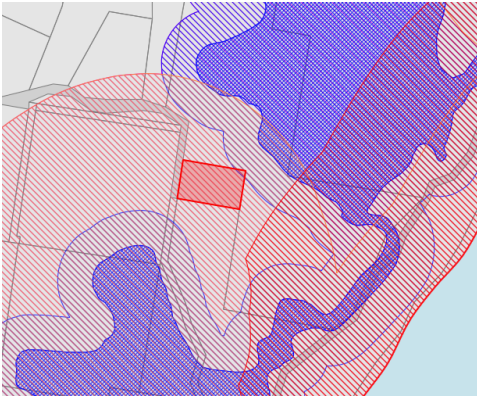
Acid sulphate soils



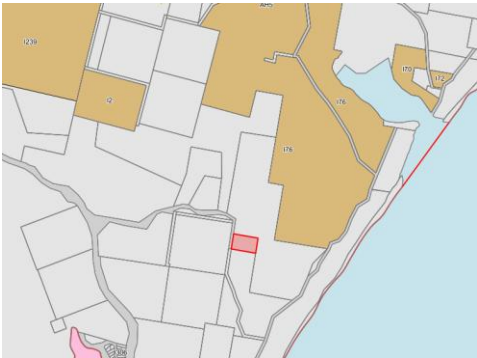
Riparian and wetland – not mapped



Slope



Coastal mapping – mapped proximity area to wetlands and Coastal Environment area



Heritage – not listed or in close proximity



Sewer, water, stormwater – None serviced

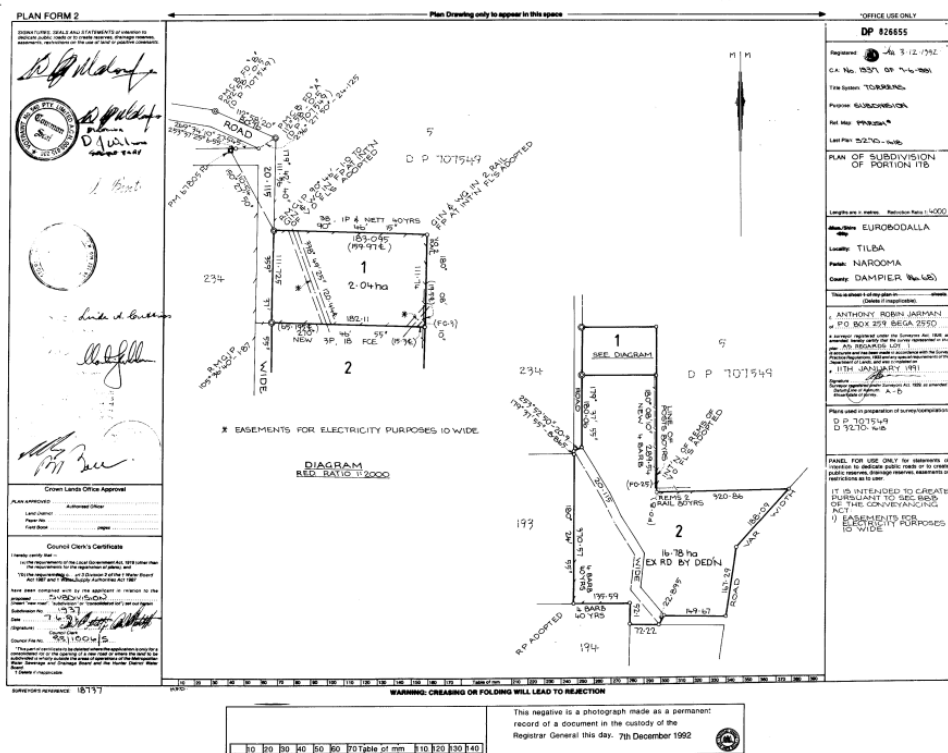


Essential Energy

C.1 DEPOSITED PLAN:

The following is noted on the Deposited Plan held by Council for this property:

- Easement for electrical purposes.

**C.2 INTERNAL AND EXTERNAL REFERRALS:**

The application was referred to Council's Environmental Health Officer to assess the capability of on site management system. Council's EHO responded with a satisfactory referral.

D. SECTION 4.15 EVALUATION**MATTERS FOR CONSIDERATIONS - GENERAL**

This application has been assessed in accordance with Section 4.15 (cf prev. S.79C) of the *Environmental Planning and Assessment Act 1979*. The matters relevant to the subject application are addressed as follows:

Section 4.15(1)(a)(i) – ANY ENVIRONMENTAL PLANNING INSTRUMENT:

The State Environmental Planning Policies (SEPPs) relevant to this proposal are:

State Environmental Planning Policy	Satisfactory	Not Satisfactory	Not Applicable	Comments
SEPP (Building Sustainability Index: BASIX) 2004	☐	☐	☒	The proposal is for concept approval only. No built form. The future built form would be BASIX affected development. As such, there is no BASIX Certificate required for this proposed development.
SEPP (Biodiversity & Conservation) 2021	☒	☐	☐	Chapter 2 Vegetation in non-rural areas

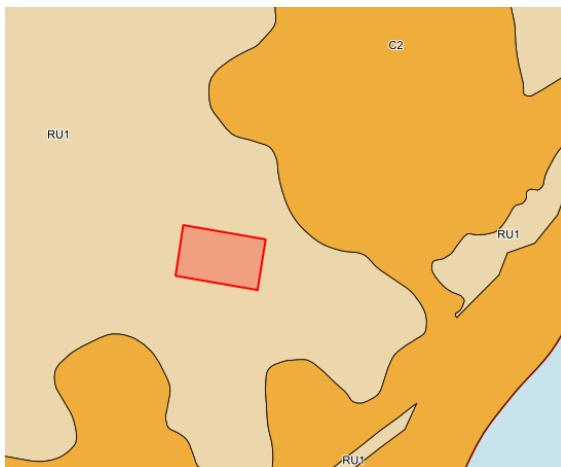
				This Chapter only applies to clearing of native vegetation in NSW on land zoned for urban and environmental purposes that is not linked to a development application. Chapter 4 Koala Habitat Protection 2021 The State Environmental Planning Policy (Biodiversity & Conservation) 2021 applies to the Eurobodalla Shire Local Government Area, identified as being in the South Coast koala management area. 4.9 Development assessment process—no approved koala plan of management for land There is no approved koala plan of management applying to the land, and the land does not have an area of at least 1 hectare (including adjoining land within the same ownership). As such, Clause 4.9 does not apply to the land.
SEPP (Primary Production) 2021	☐	☐	☒	Chapter 2 Primary Production and Rural Development The proposal does not involve primary production. Schedule 4 does not apply to Eurobodalla Shire.
SEPP (Resilience and Hazards) 2021	☒	☐	☐	Chapter 2 – Coastal Management The SEPP aims to manage development in the coastal zone, protect environmental assets of the coast, establish a framework and guide to land use planning decision making and provides mapping for the coastal management areas. The proposed development is not in the coastal wetlands or littoral rainforest areas. However the proposal is located in the proximity area to Coastal wetlands. Clause 2.8 applies. 2.8 The proposed development is located in the proximity area for Coastal wetlands. Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” unless the consent authority is satisfied that the proposed development will not significantly impact on— (a) <i>the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or</i> (b) <i>the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.</i> Provided stormwater and sediment and erosion control is managed the proposal would unlikely to have an impact on the biophysical, hydrological or ecological integrity of the adjacent coastal wetland. 2.10 The land is identified as being within the coastal environment area. The proposed development will not result in any biophysical, hydrological and ecological impacts, any coastal environmental values and natural coastline processes, the water quality of the marine estate, impact to the marine vegetation, native vegetation and faunae and their habitats, existing public open space access to and along the foreshore, including persons with a disability, aboriginal cultural heritage and the use of the surf zone. Development consent may be granted as the proposed development is located on an existing lot that will not result in any detrimental impact to the coastal environment area. 2.11 The land is not identified as being within the coastal use area. 2.12 The proposed development will not cause an increased risk of coastal hazards on other land.

				2.13 The proposed development is consistent with the coastal management plan and program applying to the land. The proposed development is consistent with the provisions of Part 2.2. Chapter 3 The proposed development does not result or request consent for any hazardous or offensive developments as defined. Chapter 4 – Remediation of Land 4.6 (1) The land is unlikely to contain any contamination at the ground surface or below ground level. The land has been approved for the purposes of a residential subdivision. The proposed development is ancillary to that use and would not pose a contamination risk. (2) The proposed development does not include any change of use. (3) The land is not within any investigation area. As such, it is considered that the proposed development does not require the submission of a detailed investigation report which assesses the contamination on the land.
SEPP (Transport and Infrastructure) 2021	☒	☐	☐	2.48. An assessment has been undertaken to determine if the proposed building is located within the vicinity of electricity infrastructure. No built form has been submitted with the application. The proposed development is not: - within or immediately adjacent to an easement for electricity purposes; - immediately adjacent to an electricity substation; - within 5m of an exposed overhead power line; - does not involve the installation of a swimming pool within 30m of a structure supporting an overhead electricity transmission line, or within 5m of an overhead power line, measured vertically; and - development involving the replacement of power lines. The proposed development does not require referral to Essential Energy.

EUROBODALLA LOCAL ENVIRONMENTAL PLAN 2012:

The property is subject to the ELEP 2012 as per the Land Application Map specified at Clause 1.3.

As per the Land Zoning Map specified within Clause 2.2, the subject site is identified as being within the RU1 Primary Production Zone.



Zoning (RU1)

A dwelling-house is permitted in the RU1 Primary Production Zone subject to consent.

The proposed development is considered to be consistent with the relevant clauses of the LEP because it:

Clause 1.2	The aims of the plans are: <i>(aa) to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,</i> <i>(a) to preserve the urban growth boundaries of Eurobodalla as identified in the Eurobodalla Settlement Strategy,</i> <i>(b) to ensure development embraces the principles of ecologically sustainable development and quality urban design, and encourages walking, cycling and public transport use,</i> <i>(c) to provide employment opportunities and strengthen the local economic base by encouraging a range of enterprises, including tourism, which respond to lifestyle choices, emerging markets and changes in technology,</i> <i>(d) to identify and protect the established residential neighbourhoods and ensure a sufficient supply of suitable land to meet the future residential needs of Eurobodalla,</i> <i>(e) to restrict development of land that is subject to flooding, coastline hazard, bush fires and land slip,</i> <i>(f) to ensure that resource lands, including agriculture, mineral resources and extractive materials are not rendered sterile from incompatible land use,</i> <i>(g) to provide measures to protect and manage the biodiversity and environmental values of the land and waterways,</i> <i>(h) to ensure that development takes into account the environmental constraints of the land and minimises any off site and on site impacts on biodiversity, water resources and natural landforms,</i> <i>(i) to identify and protect the cultural and architectural heritage of Eurobodalla, including Aboriginal relics and places, and assist in its promotion as a tourism asset.</i> The proposal contradicts the aims of the plan <i>(f) to ensure that resource lands, including agriculture, mineral resources and extractive materials are not rendered sterile from incompatible land use,</i> The significantly undersized lot was created on the condition that there would be a long term lease arrangement for agricultural purposes (palm plantation). A dwelling-house use is incompatible with the existing agricultural use of the land. The site is resource land for agriculture and the proposed dwelling-house will render the land sterile from an incompatible use, a dwelling-house. The proposal does not propose to continue any agricultural use.
Clause 2.3	The objectives of the RU1 zone are: <i>• To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.</i> <i>• To encourage diversity in primary industry enterprises and systems appropriate for the area.</i> <i>• To minimise the fragmentation and alienation of resource lands.</i> <i>• To minimise conflict between land uses within this zone and land uses within adjoining zones.</i> <i>• To minimise the visual impact of development on the rural landscape.</i> <i>• To provide for recreational and tourist activities that support the agricultural, environmental and conservation value of the land.</i> The objectives of the RU1 primary protection zone are to protect the primary productivity of rural land. The associated 100Ha minimum lot size for a dwelling on the subject site in Clause 4.2A of LEP 2012 reinforces the intent for lots zoned RU1 to be focussed on primary production. The proposal does not satisfy the objectives of the zone. <i>• The objectives of the RU1 primary protection zone are to protect the primary productivity of rural land. The associated 100Ha minimum lot size for a dwelling on the subject site in</i>

	Clause 4.2A of LEP 2012 reinforces the intent for lots zoned RU1 to be focussed on primary production. • The proposed concept approval for a dwelling-house does not encourage primary production and therefore does not satisfy the objective to <i>encourage sustainable primary industry production by maintaining and enhancing the natural resource base or encourage diversity in primary industry enterprises and systems appropriate for the area</i>. The future dwelling house encourages a rural residential use and will limit the area available for primary production. • The erection of a dwelling on the land would result in the fragmentation and alienation of resource land which is contrary to the objectives of the RU1 Primary Production zone. The land will be used for rural residential purposes, not agricultural purposes therefore the land will be used for purposes other than its resource use. The land is fragmented and alienated from its original resource purpose which was for an agricultural use (palm plantation). • Erection of a dwelling house on the subject site is incompatible with the encouragement of sustainable primary production and will preclude amalgamation for agriculture with surrounding land and potentially cause conflict of uses. • The future built form may have an adverse impact on the visual amenity of the rural landscape.
Clause 4.1	Minimum lot size The proposal does not include subdivision. However it is noted the minimum lot size for the site zoned RU1 is 100Ha. It is further noted the site at only 2.04Ha is closer to the minimum lot size for the RU4 Primary Production Zone – Small lots. There is no RU4 zoned land in the vicinity of the site. The closest RU4 zoned land is to the west of Tilba, nearly 6km away where the minimum lot sizes are either 2Ha, 5Ha or 10Ha. The vast majority of land in the vicinity of the site is zoned RU1 with some pockets of C2 Environmental Conservation along the coast.
Clause 4.2A	Erection of dwelling houses or dual occupancies on land in Zone RU1 Primary Production <i>(1) The objectives of this clause are as follows—</i> <i>(a) to minimise unplanned rural residential development,</i> <i>(b) to enable the replacement of lawfully erected dwelling houses and dual occupancies in Zone RU1 Primary Production,</i> <i>(c) to ensure that rural residential development does not create unreasonable or uneconomic demands for the provision or extension of public infrastructure.</i> The proposal is inconsistent with the objectives of the Clause. The land was originally subdivided into an undersized rural land parcel on the condition that it was for lease purposes only for an agricultural pursuit. It was not planned for residential development. The consent also states that <i>‘With registration of the plan of survey, under the 1(a) rural zone in Rural Local Environmental Plan 1987, a dwelling application will not be approved on either of the proposed lots’</i>. There are other dwellings in the vicinity of the subject site however they tend to be ‘existing holdings’ which Clause 4.2A(2) of the Eurobodalla LEP makes provision for. Development that occurs under existing holding provisions is unplanned as they do not have regard to current day planning controls. The subject site is not an existing holding. The proposal for a dwelling-house on a lot that is not an existing holding is an even greater instance of unplanned rural-residential development. (2) Development consent must not be granted for the erection of a dwelling house or dual occupancy on land in Zone RU1 Primary Production, and on which no dwelling house or dual occupancy is erected, unless the land— <i>(a) is a lot that has an area of at least the minimum lot size shown on the Lot Size Map in relation to that land, or</i>

	<u>Comment:</u> The minimum lot size for the land is 100Ha. The site has a site area of 2.04Ha and does not comply. A Clause 4.6 Statement is submitted seeking a variation to the minimum 100Ha which is a variation of 97.96%. <i>(b) is a lot created before this Plan commenced and on which the erection of a dwelling house or dual occupancy was permissible immediately before that commencement, or</i> <u>Comment:</u> The lot was created in 1992, which is before the commencement of the Eurobodalla LEP 2012, however a dwelling-house was not permissible under the previous Eurobodalla LEP 1987. The site was previously zoned Rural Environmental Constraints and Agricultural 1(a). A dwelling-house was not permitted as it not an 'existing parcel', the lot that it was subdivided from did not have a lot size of at least 20Ha, the subdivision was not approved under an Interim Development Order, the lot had a size less than 40Ha and there was no lawful dwelling-house on the lot to be replaced. <i>(c) is a lot resulting from a subdivision for which development consent (or equivalent) was granted before this Plan commenced and on which the erection of a dwelling house or dual occupancy would have been permissible if the plan of subdivision had been registered before that commencement, or</i> <u>Comment:</u> The lot was approved in 1990 and registered in 1992. A dwelling-house was not permissible between the time the subdivision was approved and registered. <i>(d) is an existing holding, or</i> <u>Comment:</u> The lot was not an existing holding being a holding on 9 August 1963. <i>(e) is a 1987 holding, or</i> <u>Comment:</u> No the lot was registered in 1992. <i>(f) (Repealed)</i> <i>(g) would have been a lot or a holding referred to in paragraphs (b)–(e) had it not been affected by—</i> <i>(i) a minor realignment of its boundaries that did not create an additional lot, or</i> <i>(ii) a subdivision creating or widening a public road or public reserve or for another public purpose.</i> <u>Comment:</u> No, none of the above has occurred.
Clause 4.3	No maximum height applies. Despite this, no built form was submitted with the application.
Clause 4.6	The proposed development involves a variation to Clause 4.2A, specifically (2)(a) relating to the minimum 100Ha lot size for a dwelling house in the RU1 Zone. The lot is only 2.04Ha. The exceedance at 97.96% is well above planning staff delegation of 10% and requires determination by Council. Clause 4.6 objective is to provide an appropriate degree of flexibility in applying certain development standards to particular development and to achieve better outcomes for and from development by allowing flexibility in particular circumstances. Caselaw Sharp v Kiama Municipal Council [2024] NSWLEC 1360 (28 June 2024) confirmed that Clause 4.2A is a development standard for the purposes of Clause 4.6. It is not a prohibition. Clause 4.6 states that development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—

- (a) *compliance with the development standard is unreasonable or unnecessary in the circumstances, and*
- (b) *there are sufficient environmental planning grounds to justify the contravention of the development standard.*

(a) Compliance with the development standard is unreasonable or unnecessary in the circumstances

The common way to establish whether compliance with the development standard is unreasonable or unnecessary is known as the '5-part test' or the 'Wehbe test' (from the case of *Wehbe v Pittwater Council* [2007] NSWLEC 827). The proposal only needs to rely on one of the above tests to satisfy the Wehbe test. The applicant is relying on the first method that the objectives of the development standard are achieved notwithstanding the non-compliance.

Compliance with the development standard is unreasonable or unnecessary if the:

- 1. objectives of the development standard are achieved notwithstanding the non-compliance**
2. *underlying objective or purpose is not relevant to the development*
3. *underlying objective or purpose would be defeated or thwarted if compliance was required*
4. *development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard*
5. *zoning of the land on which the development is proposed was unreasonable or inappropriate.*

Clause 4.2A Erection of dwelling houses or dual occupancies on land in Zone RU1 Primary Production

Objectives:

- (a) *to minimise unplanned rural residential development,*
- (b) *to enable the replacement of lawfully erected dwelling houses and dual occupancies in Zone RU1 Primary Production,*
- (c) *to ensure that rural residential development does not create unreasonable or uneconomic demands for the provision or extension of public infrastructure.*

Objective (a) 'to minimise unplanned rural residential development'

Applicant's response	Council's response
- The applicant states that the site is an existing 2Ha lot and is surrounded by dwelling-houses on all four boundaries so would be consistent with the pattern of development in the area. - The applicant states that the word 'minimise' in the objective suggests that there are few situations where a dwelling-house would be appropriate and suggests that the site and location makes it particularly suitable for a dwelling house. - The placement of the concept building envelope is in the location of the existing shed, therefore not interfering with existing vegetation or the landform and utilising the existing approved access	- The land was originally subdivided into an undersized rural lot on the condition that it was for lease purposes only for an agricultural pursuit (palm plantation). The consent also states that '<i>With registration of the plan of survey, under the 1(a) rural zone in Rural Local Environmental Plan 1987, a dwelling application will not be approved on either of the proposed lots</i>'. At the time the subdivision was approved the Eurobodalla Rural LEP 1987 was in force. The resultant lot had no potential for a dwelling-house as it did not meet the minimum lot size. The site was not planned for residential development at the time the subdivision was approved. - The erection of a dwelling-house on the lot is contrary to the objective to minimise unplanned rural residential development. There are other dwellings in the vicinity of the subject site however they tend to be 'existing holdings' which Clause 4.2A(2) of the Eurobodalla LEP makes provision for. See table below. Development that occurs under existing holding provisions is unplanned as they do not have regard to current day planning controls.

driveway is considered planned residential development.

• There is existing vegetation buffers to neighbouring properties.

• The site does not contain constraints that would hinder the development.

• The site has limited agricultural potential due to its soil characteristics (Class 4 soils).

• There is no detrimental environmental outcome.

The subject site is not an existing holding. The proposal for a dwelling-house on a lot that is not an existing holding is an even greater instance of unplanned rural-residential development.

• Granting such a significant variation to the development standard, a 97.96% shortfall of the 100Ha minimum lot size, rather than minimising rural residential, would instead be to introducing a residential use, that is otherwise not permitted.

• The objective to minimise unplanned residential development seeks to ensure the area of land available for rural land and associated uses is not reduced over time. The approval of an additional residential use will further reduce the amount of land available for agricultural uses and limit the possibility of amalgamation with adjoining properties.

Table 1 – Surrounding properties and dwelling entitlements/dwelling approvals

Lot	Lot size	Rated	Dwelling approval
Subject site Lot 1 DP 826655 Youngs Road Akolele	2.04Ha	Residential	None
Lot 5 DP 707549 Lot 234 DP752155 No. 110 Youngs Road	40.06Ha 16.19Ha Total: 56.25Ha	Farmland	1880 ‘Existing holding’ There are two approvals on record for a dwelling-house in 1988 and 1990 and it has an OSSM.
Lot 2 DP826655 No. 114 Youngs Road	16.78Ha	Residential	Lot 2 of same DP as the subject site (residual lot). No dwelling entitlement. A caretakers flat and workshop additions were approved in 1999. It also has an OSSM.

		Lot 1 DP 707549 Youngs Road Akolele	39.5Ha	Farmland	1985 registered lot. Dwelling approved via 'Existing holding' (1987 holding).
		Lot 2 DP 707549 107 Youngs Road Akolele	40.74Ha	Residential	1985 registered lot. Dwelling approved 2020 via 'Existing holding' (1987 holding)
		Lot 3 DP 707549 Youngs Road Akolele	7.7279Ha	Farmland	No history, no development.
		Lot 4 DP 707549 Youngs Road Akolele	4.138Ha	Farmland	No history, no development.
		Lot 193 DP752155 Bermagui Road Akolele	16.2900 Ha	Residential	No dwelling approvals, historic DP from 1878 would be an 'Existing holding'.
		Lot 93 DP752155 279 Bermagui Road Akolele	16.1900 Ha	Residential	Historic DP from 1880 'Existing holding', alts and adds approved in 2019.
		Lot 301 DP862426 26 Youngs Road AKOLELE NSW 2546	14.58Ha	Residential	1996 DP (land consolidation). Rural dwelling approved 1996.
Objective (b) to enable the replacement of lawfully erected dwelling houses and dual occupancies in Zone RU1 Primary Production,					
Applicant's response			Council's response		
Not applicable to this proposal. The subject lot has no existing dwelling – only a farm building.			Concurred.		

	Objective (c) to ensure that rural residential development does not create unreasonable or uneconomic demands for the provision or extension of public infrastructure.	
	Applicant's response	Council's response
	The proposal will not place undue pressure on infrastructure: • Road Infrastructure: The site fronts an existing public road maintained by the consent authority. Council's website indicates that the road is scheduled for grading in the 2024/2025 financial year, demonstrating that the existing infrastructure is sufficient and regularly maintained • Water and Sewerage: The proposal is self-sufficient and does not require extension of reticulated services: • An on-site septic system, deemed suitable for the proposed use, will be installed as demonstrated in the On-site Sewage Management Capability Assessment prepared by Southeast Engineering & Environmental. • Rainwater will be captured and utilised by the dwelling house, removing any demand on water infrastructure. • Electricity and Telecommunications: Both services are available to the site. • Self-Sustainability: A dwelling house on the will be designed to be self-sustaining, minimising its impact on public infrastructure.	Concurred.
	The applicant contends that compliance with the minimum lot size is unreasonable, despite the non-compliance, the proposed concept for a dwelling house is consistent with the land use objectives that apply to the RU1 Primary Production zone in accordance with the ELP 2012. RU1 Zone Objectives • To encourage sustainable primary industry production by maintaining and enhancing the natural resource base	
	Applicant's response	Council's response
	A dwelling house located on the site does not reduce the availability of sustainable, quality agricultural land as demonstrated in detail in section 5.3 of the attached SEE. The Site contains Class 4 soils, which have limitations for cultivation, if large enough, is suitable for grazing. The key characteristics of Class 4 land as provided by the NSW Office of Environment & Heritage, with Class 1 being the best for agriculture and Class 5 containing severe	• A dwelling-house is not a primary industry and does not satisfy this objective. • The lot size is suitable for sustainable primary industry production. The lot was created on the condition that it was to be used for an agricultural use and the 2.04Ha lot size was deemed suitable lot size for the purposes of a palm plantation at the time. There are other types of tree crops that would also be suitable on the

	limitations, the Class 4 soil can only be suitable for intermittent use for sowing of pastures and crops. The soil is not suitable for full time crops. Class 4 land is only suitable for intermittent cropping or pasture improvement. The Site size of 2.04Ha is not suitable for sustainable primary industry production. The photographic history of the site as identified in s2.3 of the SEE identifies that since the Torrens title lot was created, the site has not been utilised for primary industry.	lot such as nut trees, fruit trees and timber. There are also other types of primary production that are suitable on small lots. If the soil condition is not suitable for cultivation the owner can choose agricultural uses less dependent on soil such as bee-keeping, poultry, livestock such as goats, mushrooms or hydroponics and greenhouses. Alternatively the soil can be improved so that it is viable for cultivation.
	• <i>To encourage diversity in primary industry enterprises and systems appropriate for the area</i>	
	Applicant's response	Council's response
	A 2.04ha lot is not sufficient to encourage or sustain significant primary industry, such as broad-acre farming, large-scale livestock operations, or extensive horticulture. Rural and agricultural zones often have much larger minimum lot sizes, ranging from 40ha to 100ha or more, to support viable primary production. Lots around 2ha are more commonly associated with rural residential development consistent with the C4 Environmental Living and R5 Large Lot Residential zone rather than productive agricultural use.	- A dwelling-house is not a primary industry and does not satisfy this objective. - The future dwelling house encourages a rural residential use and will limit the area available and erodes the opportunity for primary production. - A small primary production lot can encourage diversity as there is mix of farm sizes. For a smaller lot there is limited space. It can provides diversity from large scale agricultural activities by providing an opportunity for small-scale agricultural activities such as processing jams, pickles, honey, or artisan products or a mix of small enterprises.
	• <i>To minimise the fragmentation and alienation of resource lands</i>	
	Applicant's response	Council's response
	The Torrens title lot is existing and has been created 2.04Ha. A dwelling house on the site will not cause fragmentation and alienation of resource lands.	The erection of a dwelling on the land would result in the fragmentation and alienation of resource land which is contrary to the objectives of the RU1 Primary Production zone. The land will be used for rural residential purposes, not agricultural purposes therefore the land will be used for purposes other than its resource use. The land is fragmented and alienated from its original resource purpose which was for an agricultural use (palm plantation).
	• <i>To minimise conflict between land uses within this zone and land uses within adjoining zones</i>	
	Applicant's response	Council's response
	The site adjoins existing dwellings and contains a mature vegetation buffer on all	Erection of a dwelling house on the subject site is incompatible with

	four boundaries which will screen the building envelope as shown. As provided in <i>Damilabe Pty Ltd v Gunnedah Shire Council</i> [2018] NSWLEC1295 conflicting land uses where a dwelling house was sought on a lot adjoining a site that already had a dwelling, the issue of landuse conflict would be void. In the findings of that case, it was determined that <i>'...a dwelling on the site is not inconsistent with the objectives of the zone...a dwelling on the site would not impede agricultural activity on either the site or neighbouring properties.'</i> The judgement goes on to state <i>'the existence of other similar sized lots with dwelling houses located in close proximity to the site, supports the proposed development, and will not result in an undesirable precedent.'</i>	the encouragement of sustainable primary production. - It will preclude amalgamation for agriculture with surrounding land and potentially cause conflict of uses between rural residential and rural uses. - The erection of a dwelling-house on a significantly undersized lot will set an undesirable precedent.
	To minimise the visual impact of development on the rural landscape	
	Applicant's response The proposed dwelling house will not have any negative visual impact on the rural landscape. The proposed concept building envelope is located within the area that contains an existing 4.5m high farm building. There will be no additional visual impact to the site. The site also contains mature vegetation on all four boundaries which provides for a suitable visual buffer between the proposal and adjoining dwelling houses.	Council's response The future built form may have an adverse impact on the visual amenity of the rural landscape. As no built form has been submitted with the application this can not be assessed at this time.
	To provide for recreational and tourist activities that support the agricultural, environmental and conservation value of the land	
	Applicant's response This objective is not relevant to the proposal and compliance is not required.	Council's response Concurred.
	(b) Sufficient environmental planning grounds to justify the contravention of the development standard	
	Applicant's response Pursuant to ELEP cl4.6(3)(b), it is considered that the following environmental planning grounds are sufficient to justify the non-compliances with the development standard proposed: - Compliance with the development standard is unreasonable as the site does not require additional land size to accommodate a dwelling house as demonstrated within this Clause 4.6 Written Request and supporting documentation. - There is no public benefit in maintaining	Council's response The relevant environmental planning grounds are discussed below: The proposal is inconsistent with the Zone Objectives The objectives of the RU1 primary protection zone are to protect the primary productivity of rural land. The written request fails to address how the proposed dwelling-house encourages primary production. The 2.04 ha lot was deemed suitable for primary production at the time of subdivision and is still suitable for primary production, including

	strict compliance with the development standard as a dwelling house is permitted in the zone, the proposed concept for a dwelling house meets the zone objectives, the development standard objectives and the objectives of the EP & A Act and the ELEM 2012. • There is no loss of primary agricultural land, only a positive benefit to provide additional housing in the Eurobodalla. • The proposal is supported by bushfire report, on-site sewage management capability assessment, environmental assessment and SEE that demonstrate the site is capable of sustaining a dwelling house building envelope without any environmental harm. • Based on the above, it has been demonstrated in this written request that there sufficient environmental planning grounds to justify the proposed minimum lot size non-compliance in this case.	palm or other tree crops, or other types of primary production suitable for small lots and lots with poor soil quality. The land will be used for rural residential purposes, not agricultural purposes therefore the land will be used for purposes other than its resource use and will fragment and alienate the land from its original resource purpose (palm plantation). The written request fails to demonstrate how the proposal minimises conflict between land uses within this zone and land uses within adjoining zones. Erection of a dwelling house on the subject site is incompatible with the encouragement of primary production and will preclude amalgamation for agriculture with surrounding land and potentially cause conflict of uses between rural residential and rural uses. The erection of a dwelling-house on a significantly undersized lot will set an undesirable precedent. A dwelling house is not permitted on the land A dwelling-house is listed as permitted with consent in the RU1 zone in the land-use table in the LEP however Clause 4.2A of the LEP only allows development consent to be granted for a dwelling-house in the RU1 zone if it meets minimum lot size to ensure the objectives of the RU1 zone are achieved. The site is 2.04Ha and does not meet the minimum 100Ha minimum lot size which is a significant variation, a shortfall of 97.96%. A dwelling-house is therefore not permitted. The site was only granted approval for subdivision to create the 2.04Ha lot on the condition that there would be a long term lease arrangement for agricultural purposes (palm plantation). The subdivision did not enable residential development. The consent states that <i>'With registration of the plan of survey, under the 1(a) rural zone in Rural Local Environmental Plan 1987, a dwelling application will not be approved on either of the proposed lots'</i>. The Eurobodalla LEP 2012 Clause 4.2 Rural Subdivision provides flexibility in minimum lot size in rural zones. The Clause allows opportunity for lots to be created that are less than the minimum lot size if the use will be for the purpose of primary production and
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a dwelling-house will not be situated on the lot. There does not appear to be a similar Clause within the Eurobodalla Rural Local Environmental Plan 1987 however the approval of an undersized lot for the purposes of an agricultural use aligns with the intent of Clause 4.2 of the 2012 LEP.

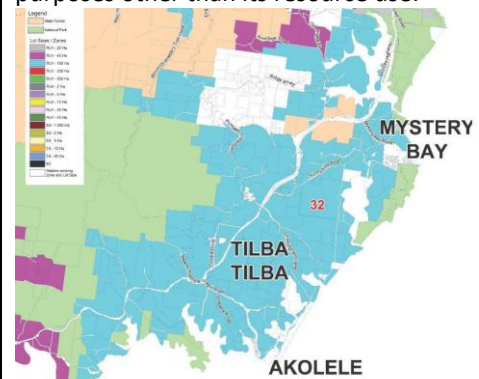
There is a myriad of other land uses that are permitted in the RU1 zone that do not rely on minimum lot size for permissibility as in the case of dwelling-houses which also needs to comply with Clause 4.2A.

The proposal will set a precedent

Approval of a dwelling entitlement on a severely undersized lot would set an undesirable precedent.

The proposal is inconsistent with the Rural Lands Strategy 2016

The Strategy identified the site as part of the Tilba land system. Significant areas of prime agricultural lands in mid sized holdings, important landscape values. Blue is RU1 – minimum lot size 100Ha. The proposed dwelling-house is inconsistent with the Rural Lands Strategy as the land will be used for purposes other than its resource use.

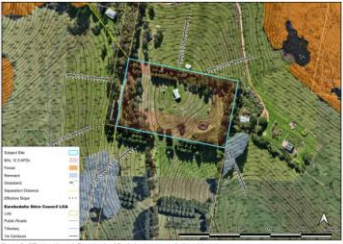


The Eurobodalla Rural Strategy Discussion Paper No. 5 Appreciation of Rural Scenic and Cultural Landscapes provides discussion on how the importance of the rural landscapes to Eurobodalla history and cultural heritage, scenic visual amenity, community well being and tourism. There is the potential for rural residential development to impact on the visual integrity of the scenic and cultural landscapes.

Constraints

There are no constraints that would hinder the development.

- The site bushfire prone. A Bushfire Report has been submitted with the

		application, that confirms a future dwelling could be constructed to BAL 12.5 which meets the requirements of Planning for Bushfire Protection 2019 for increased residential densities which ensures no more than radiant heat threshold of 29kW/sqm for any new dwellings (max BAL 29). The Bushfire Report confirms the site can accommodate a compliant APZ, access. The report confirms that no tree removal would be required to establish the APZ.  Figure 1: Effective slopes influencing bushfire behaviour towards the subject site. • The site is mapped on Council’s Native Vegetation map but not on the NSW Biodiversity Values map. A Test of Significance was submitted with the application. The ToS found that a Plant Community Type could not be assigned as the site is highly modified. Much of the site is exotic pasture and pine trees with some natives. The proposal does not propose any tree clearing and none is required for the future dwelling. The lot contains 0.82Ha of mixed native/exotic vegetation that may be impacted by habitation on the lot however as the lot is zoned for primary production and grazed by sheep, the modifications that may occur from the proposal are not considered dissimilar from those already in action on the site. No threatened species or ecological community were identified as being impacted by the development.  Figure 2: Determined vegetation zones on Lot 1 DP 826655 and approximate areas. Exotic= 1.1Ha, Mixed=0.82Ha and Dam=0.014Ha. • The site is not flood prone. • The site does not contain any acid sulphate soils.
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		- The site does not contain any riparian land or wetland. - The site does not contain any heritage items, is not proximity to any heritage items nor is it in a heritage conservation area. - The site contains slopes that would be commensurate to the construction of a future dwelling-houses. The land in the vicinity of the existing shed has a slope of 0-5 degrees. - The site mapped in the Coastal Zone and within the mapped proximity to Coastal wetlands and Coastal Environment area. The proposal will not result in any impacts.
	Conclusion: The Clause 4.6 request does not establish that compliance with the development standard is unreasonable or unnecessary. Zone Objective (a) in relation to minimising unplanned residential development is not considered to be achieved notwithstanding the non-compliance. The Clause 4.6 request does not establish that there are sufficient environmental planning grounds to justify the contravention of the development standard. The proposal is inconsistent with the RU1 Zone Objectives, a dwelling house is not permitted on the land, the proposal will set a precedent and the proposal is inconsistent with the Rural Lands Strategy.	
Clause 5.10	The site does not contain any heritage items and the site is not within a Heritage Conservation Area.	
Clause 5.21	The site is not identified as being subject to flooding or sea level rise.	
Clause 6.3	The land is not identified as Class 1 or 2 Acid Sulfate Soils.	
Clause 6.4	No earthworks proposed. The DA is for concept only.	
Clause 6.7&6.8	Will not significantly impact on area with riparian or wetland value.	
Clause 6.9	No stormwater concept proposed. The DA is for concept only.	
Clause 6.17	Will not penetrate the obstacle limitation surface as shown on the <i>Obstacle Limitation Surface Map</i> .	

Section 4.15(1)(a)(ii) – ANY PROPOSED INSTRUMENT

There are currently no draft instruments which have been subject of public consultations which may be of relevance to this proposal.

Section 4.15 (1)(a)(iii) – ANY DEVELOPMENT CONTROL PLANS

The proposal has been assessed against the requirements of the Eurobodalla Rural, R5 Large Lot Residential and C4 Environmental Living Zones Development Control Plan. It is noted the proposal is for Concept approval for a dwelling-house only, no built form was submitted with the application.

This assessment is attached as Appendix A. The proposal is considered to have satisfied the intent and controls in the DCP.

Guidelines:

The following guidelines apply to this land:

Other Codes & Guidelines	Satisfactory	Not Satisfactory	Not Applicable	Comments
Community Engagement Framework and Participation Plan	☒	☐	☐	
Footpath Trading Code	☐	☐	☒	N/A to this application
Coastal Hazard Code	☐	☐	☒	
Infrastructure Design Standards	☐	☐	☒	
Onsite Sewerage Management Code of Practice	☒	☐	☐	EHO Officer has assessed the capability of OSSM Officer as satisfactory.
Moruya or Narooma Residential Style Guide	☐	☐	☒	
Moruya or Batemans Bay Structure Plan	☒	☐	☐	
Eurobodalla Settlement Strategy	☒	☐	☐	
Rural Lands Strategy	☒	☐	☐	The proposal is inconsistent with the Rural Lands Strategy as detailed in this report.
NSW Acid Sulfate Soil Manual	☐	☐	☒	
Yellow-Bellied Glider Policy	☐	☐	☒	
Tree Risk Management on Council Controlled Land	☐	☐	☒	
Developments adjacent to National Parks and Wildlife Service Lands Guidelines	☐	☐	☒	

Section 4.15(1)(a)(iia) – ANY PLANNING AGREEMENT (OR DRAFT) UNDER SECTION 7.4

There are no planning agreements entered into or any draft agreement offered to enter into under Section 7.4 for this development.

Section 4.15 (1)(a)(iv) – ANY REGULATIONS

The prescribed matters of the regulations have been considered with no implications for this proposal.

Section 4.15(1)(b) – THE LIKELY IMPACTS OF THE DEVELOPMENT

The proposal is likely to result in adverse impacts on the natural environment:

- **Loss of agricultural land and primary productivity-** the proposed dwelling would sterilise the land from its intended agricultural use therefore the land will be used for purposes other than its resource use. The erection of a dwelling on the land would result in the fragmentation and alienation of resource land which is contrary to the objectives of the RU1 Primary Production zone. The land will be used for rural residential purposes, not agricultural purposes therefore the land will be used for purposes other than its resource use. The land is fragmented and alienated from its original resource purpose which was for an agricultural use (palm plantation). The approval of an additional residential use will further reduce the amount of land available for agricultural uses and limit the possibility of amalgamation with adjoining properties.

Section 4.15 (1)(c) – THE SUITABILITY OF THE SITE FOR THE DEVELOPMENT

Does the proposal fit the locality?

Proposal is considered inappropriate with regard to the zoning of the site as a dwelling-house is not permitted on the land, the proposal is incompatible with primary production and the site was not planned for residential development.

Are the site attributes conducive to development?

The site is accessed via Youngs Road then an existing Crown road. Council's Assets team has confirmed that the site's road frontage is owned and managed by the Crown, not Council. Owners consent has not been provided by Crown Land. No details have been provided from Crown Land demonstrating no objections to the use of the Crown road for access purposes. The proposal is not suitable for the development as it has not demonstrated that the site has access to a public road.



Access arrangement

Section 4.14 - Bushfire

The proposal complies with the requirements of the NSW Rural Fire Service, Planning for Bush Fire Protection 2019. Relevant conditions have been imposed with regard to bushfire construction and management as per the assessment attached to this report as Appendix A.

The site is bushfire prone. A Bushfire Report was submitted as required. The report recommends a proposed dwelling house on this lot can achieve a BAL 12.5



Aboriginal Heritage

The applicant has provided a Due Diligence Assessment with their application. There are no known matters of significance identified.



AHIMS Web Services (AWS)

Search Result

Your Ref/PO Number : youngs rd

Client Service ID : 895616

Candor Town Planning Ireland

PO Box 983

Moruya New South Wales 2537

Attention: Candor Town Planning Ireland

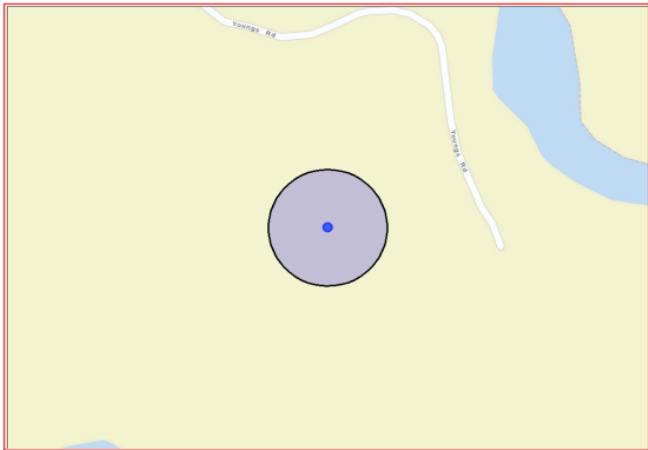
Email: admin@candorplanning.com.au

Date: 27 May 2024

Dear Sir or Madam:

AHIMS Web Service search for the following area at Address : 114 YOUNGS ROAD AKOLELE 2546 with a Buffer of 50 meters, conducted by Candor Town Planning Ireland on 27 May 2024.

The context area of your search is shown in the map below. Please note that the map does not accurately display the exact boundaries of the search as defined in the paragraph above. The map is to be used for general reference purposes only.



A search of Heritage NSW AHIMS Web Services (Aboriginal Heritage Information Management System) has shown that:

0	Aboriginal sites are recorded in or near the above location.
0	Aboriginal places have been declared in or near the above location. *

Standard Condition “*Discovery of Relics and Aboriginal Objects*” has been applied regarding unknown matters.

Section 4.15 (1)(d) – ANY SUBMISSIONS RECEIVED

This application was notified. No submissions were received during the assessment process.

Section 4.15 (1)(e) – THE PUBLIC INTEREST

It is considered that the proposal is not suitable for the site and is contrary to the public interest and approval of the development would set an undesirable precedent for similar inappropriate development and is therefore not in the public interest.

E. Contributions

LOCAL INFRASTRUCTURE CONTRIBUTIONS

The proposal is not subject to contributions under Section 7.11 of the EP&A Act being the Eurobodalla Local Infrastructure Contributions Plan 2022.

Do Rural Roads apply? No

Section 7.12 - Section 7.12 Contributions Plan 2022

The proposal is not subject to contributions under Section 7.12 of the EP&A Act.

F. RECOMMENDATION:

The application has been assessed having regard to the Matters for Consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979, and the statutory and non-statutory provisions as relevant to this application and as discussed in this report.

It is recommended that the development be refused for the reasons set out below:

1. Pursuant to the provisions of Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with Eurobodalla Local Environmental Plan 2012 with respect to:
 - Aims of plan
 - Clause 2.3 Zone Objectives
 - Clause 4.2A Erection of dwelling houses or dual occupancies on land in Zone RU1 Primary Production
 - Clause 4.6 Exceptions to development standard.
 - The site is not an “existing holding” and was not planned for residential use.
2. Pursuant to the provisions of Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with Rural, R5 Large Lot Residential & E4 Environmental Living Zones Assessment Development Control Plan in relation to site access.
3. Pursuant to the provisions of Section 4.15 (1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development would have an adverse impact on the natural environment as the proposed dwelling would sterilise the land from its intended agricultural use and fragment and alienate resource land, reducing opportunities for agricultural amalgamation and long-term productivity.

4. Pursuant to the provisions of Section 4.15 (1)(c) of the Environmental Planning and Assessment Act 1979, the proposed development site is not suitable for the proposed development as a dwelling-house is not permitted on the land and does not encourage primary production.
5. Pursuant to the provisions of Section 4.15 (1)(c) of the Environmental Planning and Assessment Act 1979, the proposed development has not demonstrated that the site has access to a public road.
6. Pursuant to the provisions of Section 4.15 (1)(e) of the Environmental Planning and Assessment Act 1979, in the circumstances of the case, the development is inappropriate and is therefore not in the public interest.

Recommending Senior Development Assessment Planner
krobinso 16/10/2025

Recommending Officer: _____

Delegated Officer: _____

Reviewed by A/Div Manager Development & Compliance
dmeagher 16/10/2025

Reviewed by: _____

ATTACHMENT: RURAL, R5 LARGE LOT RESIDENTIAL & E4 ENVIRONMENTAL LIVING ZONES ASSESSMENT						
DEVELOPMENT CONTROL PLAN adopted 24 September 2019						
Performance Criteria	Acceptable Solution		Y	N	RFI	Comment
2.0 SITE PLANNING	<i>Intent: To minimise visual and environmental impact of new development on the landscape.</i>					
P1 All buildings are sited to minimise the risk to human life and damage to property by avoiding steep and unstable land.	A1.1	No development or land clearing shall occur on slopes equal to or greater than 1:4 (or 25 %).	☒	☐	☐	<25% slope
	A1.2	Where slopes are greater than 1:6.5 (or 15%) a report prepared by a qualified geo-technical engineer or soil conservationist is required to consider the suitability of the site for buildings having regard to the stability of the land.	☐	☐	☒	0-5 degrees
P2 The scale, location, footprint and height of buildings is such that: - buildings recede into the landscape - do not compromise ridgelines or areas of high visual significance - visual impact on scenic, natural landscape and adjoining properties is minimised. - Refer to Figure 1.	A2	Buildings must not be located on hilltops, ridgelines or prominent knolls.	☒	☐	☐	The proposed concept dwelling-house is to be located on the knoll in place of the existing shed. However it is not a prominent knoll and is unlikely to be highly visible from the surrounding area.
P3 All buildings are located to minimise the clearing of native vegetation.	A3	Second dwellings (in a dual occupancy development) and secondary dwellings must primarily utilise the same Asset Protection Zone as the primary dwelling.	☐	☐	☒	
2.2 Setbacks	<i>Intent: To reinforce the rural character of the area, protect rural vistas and landscapes and maintain rural amenity.</i>					
P1.1 Setbacks, including front and side setbacks, of development are consistent with setbacks elsewhere in the vicinity.	A1.1	Dwellings must be setback a minimum of 12m from all boundaries of the lot on which it is situated except where the boundary is to an unsealed public or private road on a Right of Way benefitting another lot, in which case the minimum setback is 30m.	☒	☐	☐	
P1.2 Buildings have setbacks that minimise the potential for land use conflicts.	A1.2	All buildings other than dwellings must be setback at least 20m from the road frontage and 12m from any side or rear boundary.	☒	☐	☐	
2.3 Parking and Access	<i>Intent: To ensure development provides safe and adequate access and on-site parking arrangements</i>					
P1 The provision of parking and access sufficient to cater for the maximum demand for the development type as established by a Traffic Study. The Traffic Study is to be performed by a qualified professional and approved by Council.	A1.	All development must comply with the Parking and Access Code .	☐	☐	☒	The site is accessed via Youngs Road then an existing Crown road. Owners consent has not been provided by Crown Land. No details have been provided from Crown Land demonstrating no objections to the use of the Crown road for access purposes.

P2 Access is located and designed to minimise adverse visual and environmental impact. (Refer to Figure 2)	A2	Driveways and other internal roads must follow natural contours where possible. Avoid unreasonably steep and visually intrusive driveways. Refer to Figure 2	☒	☐	☐	
2.4 Views	<i>Intent: To provide opportunities for view sharing, where practical, for existing and future residents by encouraging innovative design solutions</i>					
P1 Development allow for the reasonable sharing of views through the siting, height and design of buildings.	A1	The design of development minimises impacts on private views and shares views where necessary by: • locating structures to provide or maintain view corridors; or	☐	☐	☒	Not assessed – Concept DA only.
		• adjusting rooflines, or modifying building bulk and scale; or	☐	☐	☒	
		• demonstrating regard and consideration of views in the development design.	☐	☐	☐	
2.5 Signage	<i>Intent: To promote a high standard of and prevent excessive signage.</i>					
	A1	All development must comply with the Signage Code and where relevant State Environmental Planning Policy No 64 - Advertising and Signage .	☐	☐	☒	
Section 3 SUBDIVISION						
3.1 Subdivision Pattern and Lot Layout	<i>Intent: To promote a high standard of and prevent excessive signage.</i>					
P1 All new lots must have a sufficient area of land free of environmental constraints capable of development for the purposes of a dwelling (where a dwelling entitlement exists) and/or for farm buildings.	A1	All new lots must contain a minimum 600m ² building envelope.	☒	☐	☐	Capable of compliance.
Section 4 BUILT FORM						
4.1 Building Bulk and Scale	<i>To ensure that development contributes positively to the local area</i>					
P1 Development responds to the topography of the site and is not of a bulk or scale that is out of character with the local area.	A1	On sloping sites, buildings must step down the block. Refer to Figure 4. 	☒	☐	☐	
4.2 Style and Visual Amenity	<i>Intent: To ensure that buildings respond to the topography of the site. Note: For land within the suburbs of Moruya and Moruya Heads as shown on Council's Suburbs Maps, refer to the Moruya Residential Style Guide.</i>					
P1 New development does not compromise the design integrity of existing development and preserves and enhances the amenity of the surrounding environment.	A1	New development must be designed to be consistent with existing development and sympathetic with surrounding development in terms of style and orientation of openings, roof pitch, materials, colours and general style.	☐	☐	☒	Not assessed – Concept DA only.

P2 Shipping containers are located so that they are not visible from any road and adjoining property.	A2	To preserve the character of the area, any approved shipping container must be located behind existing buildings, not be located in front of the established or proposed building line and be screened from view from any adjoining property. Controls for the provision of minimum boundary setbacks apply.	☐	☐	☒	None.
4.3 Fencing		<i>Intent: To ensure that fencing preserves and enhance the rural character of the area.</i>				
P1 The choice of fencing styles and materials complements the character of the area.	A1	Fencing must be: • post and rail; or • rural wire; or • of an open style.	☐	☐	☒	Not assessed – Concept DA only.
Section 5 SITE CONSIDERATIONS						
5.1 Flood, Ocean Influences and Climate Change		<i>Intent: To further the objectives of clause 6.5 of the LEP 2012.</i>				
	A1	All development within the area to which the Moruya Floodplain Code applies must comply with that Code.	☐	☐	☒	
5.2 Tree Preservation		<i>Intent: To minimise impacts on native flora and fauna, particularly threatened species.</i>				
	A1	All development on land to which the State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 applies must comply with that policy.	☐	☐	☒	
	A2	Clearing of vegetation that is not likely to significantly affect threatened species must comply with the Eurobodalla Tree Preservation Code . Clause 7.2 of the Biodiversity Conservation Act 2016 , describes when an activity is likely to significantly affect threatened species which includes: (a) If it is found to be likely to significantly affect threatened species according to the test in Section 7.3 of the Biodiversity Conservation Act 2016;	☒	☐	☐	ToS states that no vegetation removal is necessary.
		(b) If the area of clearing exceeds the threshold described in Clause 7.2 of the Biodiversity Conservation Act 2016 ; or	☐	☐	☐	
		(c) If the clearing is of native vegetation on land included on the Biodiversity Values Map .	☐	☐	☐	

5.3 Biodiversity	<i>Intent: To maintain terrestrial and aquatic biodiversity, including the following:</i> (a) protecting native fauna and flora, (b) protecting the ecological processes necessary for their continued existence, (c) encouraging the recovery of native fauna and flora and their habitats, (d) maximising connectivity, and minimising fragmentation, of habitat					
	A1	Before determining a development application for development on land identified as "Native Vegetation" on the Native Vegetation Map , the consent authority must consider any adverse impact of the proposed development on the following:				
		(a) native ecological communities,	☐	☐	☐	
		(b) the habitat of any threatened species, populations or ecological community,	☐	☐	☐	
		(c) regionally significant species of fauna and flora or habitat,	☐	☐	☐	
		(d) habitat elements providing connectivity	☐	☐	☐	
	A2	Development consent must not be granted to development on land identified as "Native Vegetation" on the Native Vegetation Map , unless the consent authority is satisfied that:				
		(a) the development is designed, sited and will be managed to avoid any adverse environmental impact, or	☐	☐	☐	
		(b) if that impact cannot be avoided—the development is designed, sited and will be managed to minimise that impact, or	☐	☐	☐	
(c) if that impact cannot be minimised—the development will be managed to mitigate that impact.		☐	☐	☐		
5.4 Bushfire Protection	<i>Intent: To minimise impacts on development and communities from bushfires.</i>					
	A1	Development in bushfire prone areas must comply with the Rural Fires Act 1997 .	☒	☐	☐	Bushfire Report concludes that the future dwelling-house is likely to be BAL 12.5 which is compliance for increased residential densities (max BAL 29).
	A2	Development on land identified in Schedule 4. Land Requiring Additional Bush Fire Protection Measures , is identified as high bushfire risk and must take into consideration the additional bushfire protection measures outlined in the schedule, subject to satisfactory environmental assessments.	☐	☐	☒	

	A3	Development on land identified in Schedule 5 - Land Unlikely to Achieve Adequate Bushfire Protection for New Dwellings and/or Subdivision , is identified by the Rural Fire Service (RFS) as extreme bushfire risk and unlikely to be able to achieve adequate bushfire protection to facilitate further subdivision and/or new dwellings. <i>Note: Proponents are advised to discuss their proposal with the RFS prior to the lodgement of a development application.</i>	☐	☐	☒	
6.0 SITE WORKS						
6.1 Sustainability	<i>Intent: To minimise the impact of new development on the natural environment;</i>					
P1 New development is designed to minimise the generation of greenhouse gases.	A1	New development must connect to reticulated electricity supply where available to enable any excess power created from alternative renewable resources to be fed back into the grid.	☒	☐	☐	
6.2 Earthworks / Excavation	<i>Intent: To retain the natural slope of the land and ensure that the bulk and scale of new development is responsive to site topography</i>					
P1 Development is designed to ensure that excavation and earthworks are kept to the minimum required for the development without an unreasonable adverse visual impact on the site.	A1	Beyond the external; walls of the building, the maximum cut is to be 1m and the maximum fill is to be 1m.	☐	☐	☒	Not assessed – Concept DA only.
6.3 Waste Management	<i>Intent: To further the objectives of the Site Waste Minimisation and Management Code</i>					
P1 Application of a site specific Site Waste Minimisation and Management Plan, approved by Council having regard to the objectives of the Code. The Plan must show that compliance with the Code is unreasonable or unnecessary in the circumstances of the case.	A1	All development must comply with the Site Waste Minimisation and Management Code .	☒	☐	☐	

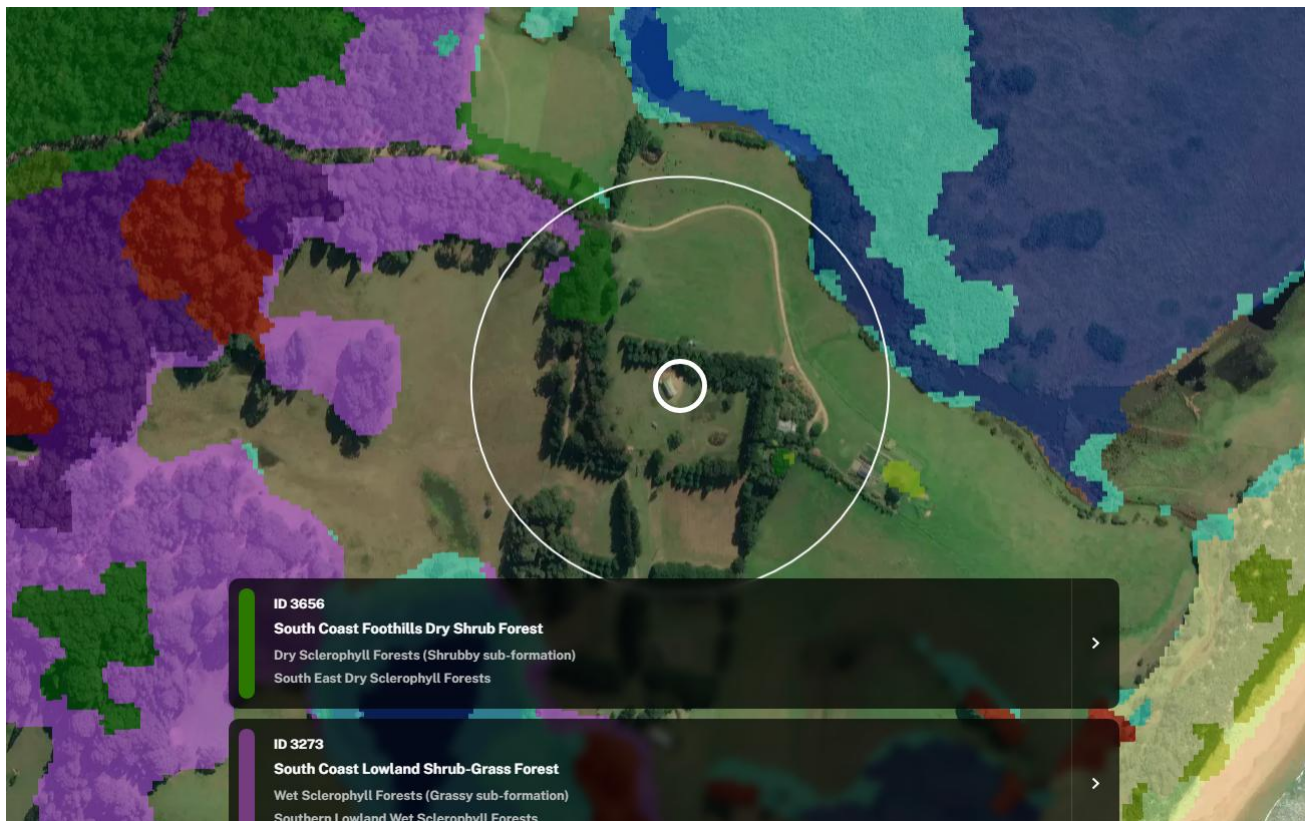
APPENDIX B: SECTION 4.14 BUSHFIRE ASSESSMENT

Reference: RFS - Planning for Bushfire Protection (PBP) 2019

APPLICATION:	DA0550/25
PROPOSAL:	Concept approval for a dwelling house
ADDRESS:	Youngs Road AKOLELE NSW 2546; Lot 1 DP 826655
DATE OF INSPECTION:	

1. SITE CONTEXT





The slope and vegetation types and resultant BAL in the Bushfire Report:

Aspect	Effective slopes	Classified vegetation	Available setbacks	BAL 29 APZs per Table A1.12.2 PBP 2019	Potential BAL rating for future development
North	5-10° Downslope	Grassland	≥20m	13m	BAL 12.5
Northeast	10-15° Downslope	Grassland		15m	
Southeast	5-10° Downslope	Remnant	≥37m	18m	
Southwest	5-10° Downslope	Remnant		18m	
West	5-10° Downslope	Grassland	≥20m	13m	

Table 2 - APZ requirements for future development per Table A1.12.2 of PBP 2019.

2. DEVELOPMENT TYPE

- ☒ Dwelling
- ☐ Dual Occupancy
- ☐ Alterations/Additions
- ☐ Class 10A
 - ☐ < 6m from dwelling - may require separate assessment to that of the host building
 - ☐ ≥ 6m from dwelling - no bush fire protection requirements apply

- ☐ Home-based Child Care
- ☐ Other:

3. ASSET PROTECTION ZONES (APZs)

Aspect	North /North East /North West	South /South East / South West	East /North East /South East	West / North West / South West
Vegetation formation most dominate vegetation for bush fire impact within 140m is applied	Grassland	Remnant Bushland	Grassland	Grassland
Distance to vegetation	34m	62m	89m	85m
Effective Slope* * slope beneath bush fire hazard from the building for a distance of 100m	>5° - 10°	>5° - 10°	>10° - 15°	>5° - 10°
Construction requirements	BAL 12.5	BAL 12.5	Nil Requirements	Nil Requirements
Required APZ (max slope 18°)** ^ Allowable OPA distance for Forest vegetation: upslope/flat = 10m >0°-5° = 10m >5°-10° = 15m >10°-15° = 15m >15°-18° = 20m	To property boundary			

**Performance based solution

4. GRASSLAND DEEMING PROVISIONS

- ☐ N/A
- ☐ Over 50m APZ - No BPMs required
- ☐ 20m to 49m APZ* - Deeming provisions apply (BAL 12.5) – refer to Table 7.9a of PBP2019
- ☐ >20m APZ - Ordinary assessment

* The maximum slope for the Deeming Provisions is restricted to 15 degrees downslope.

5. WATER SUPPLIES

Reticulated water supply is available with adequate hydrant coverage

- ☐ Yes - Distance of hydrant to most distant portion of housem (70m+20m reqd)
- ☒ No - *Water supply requirements for non-reticulated developments or where reticulated water supply cannot be guaranteed bush firefighting purposes in addition to that required for domestic purposes.*

Development Type	Static Water Requirements
☐ Residential lots (<1,000sqm)	5,000L/lot
☐ Rural-residential lots (1,000 – 10,000sqm)	10,000L/lot
☐ Large rural/lifestyle lots (>10,000sqm)	20,000L/lot
☐ Multi-dwelling housing (including dual occupancies)	5,000L/unit

Dedicated static water supply required by proposal depicted on plans

- ☐ Yes -
- *Static water supply satisfies the following requirements :*
 - *a connection for firefighting purposes is located within the IPA or non-hazard side and away from the structure;*
 - *tanks on the hazard side of a building are provided with adequate shielding for the protection of firefighters;*
 - *a hardened ground surface for truck access is supplied within 4m;*
 - *unobstructed access can be provided at all times;*

6. ACCESS

Property is in an urban area

- ☐ Yes
- *An unobstructed path (no greater than 70m) is provided between the most distant external part of the proposed dwelling and the nearest part of the public access road (where the road speed limit is not greater than 70kph) that supports the operational use of emergency firefighting vehicles*
- ☒ No
- *Performance based solution*

Property access roads are two-wheel drive, all-weather roads:

- ☐ Yes -
- ☐ No -

At least one alternative property access road is provided for individual dwellings or groups of dwellings that are located more than 200m from a public through road:

- ☐ Yes -
- ☐ No - *Performance based solution*
- ☐ N/A -

Access road grades

- ☐ >0°-10° -
- ☐ >10°-15° - *Required to be sealed*
- ☐ >15° - *Performance based solution*

7. SUMMARY

The proposed development conforms to the specifications and requirements of the NSW Rural Fire Service, Planning for Bush Fire Protection 2019, and as such is satisfactory with regard to Section 4.14 of the Environmental Planning and Assessment Act 1979, subject to conditions being imposed on the consent.