

General Manager  
Tweed Shire Council  
PO Box 816  
MURWILLUMBAH NSW 2484

Attention: Ms Sian Young

Dear Mr Green

**RE: Planning Proposal –Lot 1 1032820, Scenic Drive (Walmsleys Road) Bilambil Heights**

Thank you for your e-mail dated 11 April 2022 about the Planning Proposal at Scenic Drive (Walmsleys Road), Bilambil Heights, seeking comments from the Biodiversity and Conservation Division (BCD) of the Biodiversity, Conservation and Science Directorate in the Environment and Heritage Group of the Department of Planning and Environment. I appreciate the opportunity to provide further input.

We have reviewed the *Ecological Survey and Assessment – Lot 1 DP 1032820 at Scenic Drive Bilambil Heights, 2486* prepared and supplied to the BCD by Bushland Restoration Services and dated August 2021.

We note the Ecological Survey and Assessment has been amended following the BCD's previous submission on the matter, dated 9 March 2021. In that advice, the BCD recommended identification and mapping of the High Environmental Values (HEV) present over the planning area, to identify the opportunities and constraints to proposed future residential development.

Following our review of the revised assessment, the BCD considers the HEV mapping over the planning area is accurate and reflective of the values present. In addition, we agree that while some rainforest vegetation persists across the site, there are also a significant number of weeds including camphor laurel and Johnson's grass, and extensive plantings of native and exotic species, including a fruit orchard.

Furthermore, several threatened species have also been recorded on site, some of which are identified as Serious and Irreversible Impact (SAII) species. However, we are satisfied that those threatened species occurring within the central part of the planning area (proposed for zoning to R1) have been planted as garden specimens. As such the BCD agrees that these occurrences do not comprise HEV land.

We support the approach of progressing the Planning Proposal by applying an interim RE2 zone to areas now proposed for C2 and C3 zones, subject to a planning agreement committing to applying the C2 and C3 zones in those areas when the Tweed Shire Council determines to include C zone provisions within the *Tweed Local Environmental Plan 2014*

Nonetheless, as set out in **Attachment 1** to this letter, we have identified several issues with the preparation of the Ecological Survey and Assessment. The issues primarily stem from the adherence to the desired development plan in determining the proposed zoning layout, rather than being guided by the opportunities and constraints present in the planning area.

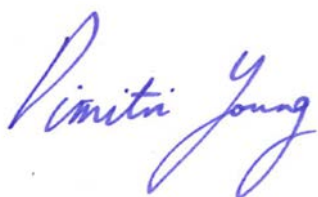
In summary, the BCD recommends that:

1. The parts of the planning area suitable for residential development should be determined following consideration of the opportunities and constraints present across the planning area, including areas of HEV and the bushfire threat posed by nearby vegetation.
2. Future residential development, including ancillary works, such as bushfire protection measures, should not encroach into any areas of HEV.
3. The Ecological Assessment and the Planning Proposal should be amended to protect the HEV areas present from inappropriate urban development by applying the C2/interim RE2 zone to all identified HEV land in the planning area.
4. The steep and degraded parts of the planning area proposed for revegetation should be included within the proposed C2/interim RE2 zone.
5. The council should consider the permanent application of the RE2 zone across the area currently proposed to be zoned C3, excluding the areas of HEV and areas to be revegetated as per our recommendations 3 and 4 above.
6. The proposed Planning Agreement should be amended to set out proposed restoration of relevant parts of the C2/interim RE2 zone, as well as the methods to manage the permanent RE2 zone proposed in our recommendation 5 above, including any suitable tree plantings, consistent with the management of any future bushfire Asset Protection Zone that may be required.
7. A Minimum Lot Size of 4 hectares should be applied to land proposed for C2/interim RE2 zoning, including those areas we have proposed in our recommendations 3 and 4 above, and for land in the permanent RE2 zone we have proposed in our recommendation 5 above.

The BCD would be pleased to review any further amendments to the Ecological Assessment and Survey, the Planning Proposal and the Planning Agreement for Lot 1, Scenic Drive (Walmsleys Road), Bilambil Heights.

If you have any questions about this advice, please do not hesitate to contact Ms Nicky Owner, Senior Conservation Planning Officer, at [nicky.owner@environment.nsw.gov.au](mailto:nicky.owner@environment.nsw.gov.au) or 6659 8254.

Yours sincerely



14 April 2022

**DIMITRI YOUNG**  
**Senior Team Leader Planning, North East Branch**  
**Biodiversity and Conservation**

Enclosure: Attachment 1: Detailed BCD Comments – Planning Proposal –Bilambil Heights

cc: Ms Sandra Pimm, Bushland Restoration Services; Ms Carlie Boyd, DPE, Grafton.

## Attachment 1: Detailed BCD Comments – Planning Proposal –Bilambil Heights

### Background

The Biodiversity Conservation Division (BCD) in the Department of Planning and Environment has reviewed the information presented in the *Ecological Survey and Assessment – Lot 1 DP 1032820 at Scenic Drive Bilambil Heights, 2486* (henceforth referred to as the 'Ecological Assessment'), prepared by Bushland Restoration Services and dated August 2021.

The Ecological Assessment has been amended following the BCD's previous submission on the matter, dated 9 March 2021. In that advice, the BCD recommended identification and mapping of the High Environmental Values (HEV) present over the planning area, to identify the opportunities and constraints present. This information was then to be used to guide the layout and mix of zones to be applied over the site.

To verify the vegetation mapping undertaken and documented in the Ecological Assessment, the BCD inspected the site, accompanied by Ms Sandra Pimm from Bushland Restoration Services, on Wednesday 6 April 2022. We confirmed during the inspection that the mapping prepared is accurate and reflective of the values present. While some rainforest vegetation persists across the site, there is also a significant number of weeds including camphor laurel and Johnson's grass, and plantings of native and exotic species, including a fruit orchard.

Please note that reference to Environment (E) zones in the Planning Proposal (PP) (dated November 2020) and the Ecological Assessment are now taken to refer to Conservation (C) zones after the naming convention for Environment Protection Zones was changed in late 2021 by the Department.

### Mapping of High Environment Values

The BCD is of the view that HEV has been appropriately identified and mapped across the planning area. Figure 3 (below) from the Ecological Assessment illustrates the extent of HEV across the planning area. HEV values identified include lowland rainforest (a threatened ecological community) and threatened species habitat.

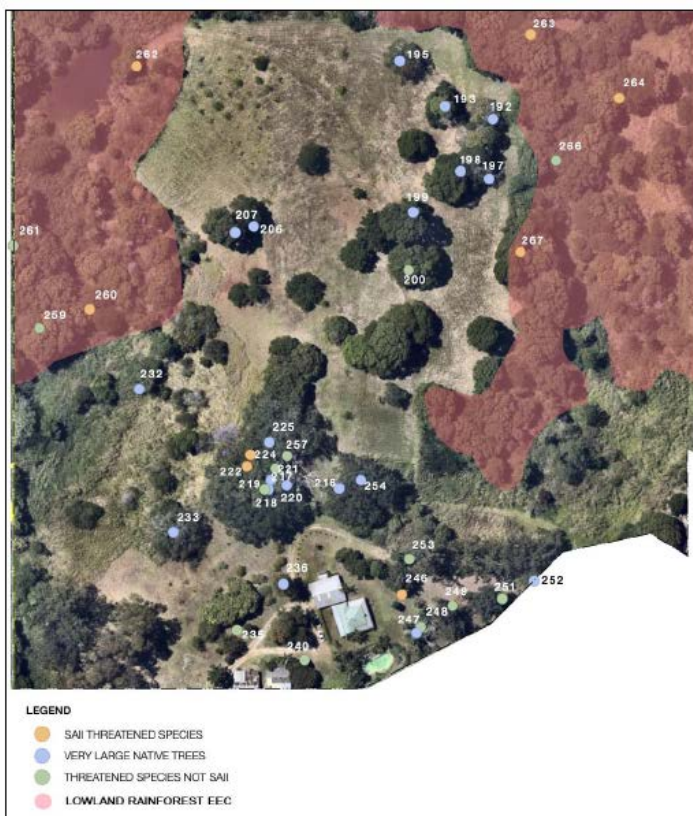


Figure 3: High Environmental Value includes the rainforest EEC and the SAI threatened species recorded on site.

Several threatened species have also been recorded in the planning area. Those occurring within the central part of the planning area have been planted as garden specimens. As such, the BCD agrees that these occurrences do not comprise HEV land, and therefore, there is no justification to rezone these areas of the site to RE2/C2.

There are several threatened flora species occurring within the vegetated parts of the planning area. Most of these areas are proposed for inclusion in the proposed C2/RE2 zone, which we support.

The Ecological Assessment has also reported on the presence of several large fig trees within the central part of the planning area, which are recommended for retention, due to the habitat (including food resources) provided by those trees to a range of fauna species. The BCD supports the retention of these trees.

#### Proposed temporary zoning provisions.

We note the *Tweed Local Environmental Plan 2014* (TLEP 2014) does not contain C2 - Environmental Conservation or C3 - Environmental Management zone provisions.

As a result, the Ecological Assessment indicates that all proposed C2 and C3 zones will be temporarily rezoned RE2 – Private Recreation. A planning agreement has been drafted to ensure the RE2 area is rezoned to C2 and C3 when the Tweed Shire Council determines to include C zone provisions within the TLEP 2014. We support this approach to progressing the PP.

#### Proposed zoning of the Planning Area

Our previous submission dated 9 March 2021, stated that the constraints and opportunities present should guide the future mix and extent of zones across the planning area, rather than using the proposed development footprint to determine zone boundaries.

Despite this, it appears the revised Ecological Assessment has continued to focus on achieving the proposed development form. This is confirmed by Figure 5 which shows that two areas of HEV will require clearing, as outlined in red, to allow for the creation of the bushfire Asset Protection Zones (APZs) required to enable the desired future development.

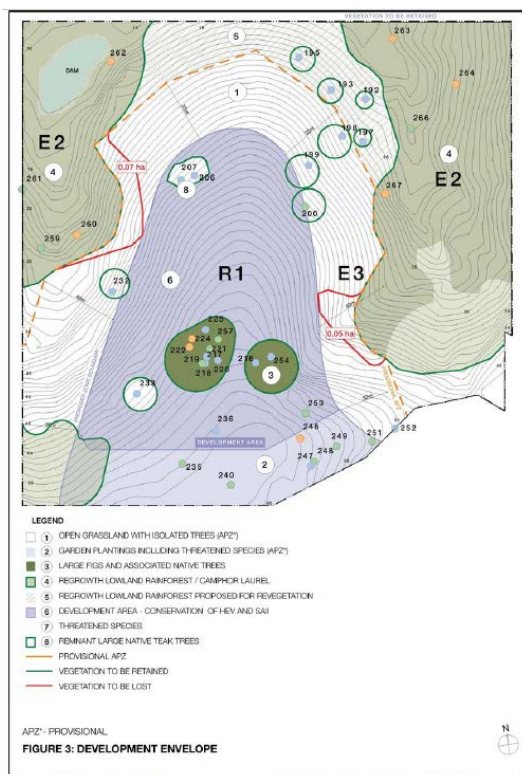


Figure 5: HEV likely to be modified or lost from the proposed development is indicated by red shading above. The combined area totals 0.12ha.

The BCD does not support clearing of HEV land for APZs. The proposal is also inconsistent with statements included in the North Coast Regional Plan including, *'directing growth to locations that do not compromise the natural environment'* and *'new development should be appropriately located to limit any adverse impact on the region's biodiversity'*.

If the level of bushfire risk present cannot be managed via building standards, and/or existing setback distances do not satisfy Planning for Bushfire Protection requirements, then the scale of residential development proposed may not be appropriate for the planning area.

It is the BCDs view that all HEV vegetation present within the planning area should be zoned C2/interim RE2. Whilst the BCD supports the proposed revegetation of steep and degraded parts of the planning area, these areas should also be rezoned C2/interim RE2.

While no justification has been provided within the PP for applying the C3/interim RE2 zone, it would appear the C3 zone is proposed to create a buffer between the proposed R1 and C2/interim RE2 zoned areas. The area proposed for zoning to C3 is largely devoid of naturally occurring native vegetation, and areas of HEV are absent.

As such, given the limited biodiversity values within the proposed C3 area, we question the suitability of a C3 zoning and suggest an alternative permanent RE2 zoning may be more suitable. The permanent RE2 zone would provide the desired buffer to the C2 area and would be more suitable for use as an APZ than the C3 zone.

In addition, the permanent RE2 zone would allow for the recreational enjoyment of the land by nearby residents and opportunities would exist for some restoration works to create a vegetated buffer to the C2 zone, if the requirements of the APZ are met. Tree planting and management would be consistent with the objectives of the RE2 zone.

In addition, and as shown in Figure 5 of the Ecological Assessment, it is likely that APZs for the proposed development form will significantly encroach into the proposed C3/interim RE2 area. The BCD does not generally support the use of C3 zoned lands for infrastructure that is ancillary to future development, including APZs. It is our firm view that APZs and other infrastructure are inconsistent with C3 zone objectives.

***BCD Recommendations:***

1. The parts of the planning area suitable for residential development should be determined following consideration of the opportunities and constraints present across the planning area, including areas of HEV and the bushfire threat posed by nearby vegetation.
2. Future residential development, including ancillary works, such as bushfire protection measures, should not encroach into any areas of HEV.
3. The Ecological Assessment and the Planning Proposal should be amended to protect the HEV areas present from inappropriate urban development by applying the C2/interim RE2 zone to all identified HEV land in the planning area.
4. The steep and degraded parts of the planning area proposed for revegetation should be included within the proposed C2/interim RE2 zone.
5. The council should consider the permanent application of the RE2 zone across the area currently proposed to be zoned C3, excluding the areas of HEV and areas to be revegetated as per our recommendations 3 and 4 above.
6. The proposed Planning Agreement should be amended to set out proposed restoration of relevant parts of the C2/interim RE2 zone, as well as the methods to manage the permanent RE2 zone proposed in our recommendation 5 above, including any suitable tree plantings, consistent with the management of any future APZ that may be required.

Amendments to Planning Proposal

We note the Minimum Lot Size (MLS) is not specified by the PP for the proposed C2/RE2 or C3/RE2 zones. It is our view that an MLS of 4 hectares will remove any future potential for subdivision of the C2/RE2 zone and would also be appropriate for the permanent RE2 zone we have proposed.

*BCD Recommendation:*

7. A Minimum Lot Size of 4 hectares should be applied to land proposed for C2/interim RE2 zoning including those areas we have proposed in our recommendations 3 and 4 above, and for land in the permanent RE2 zone we have proposed in our recommendation 5 above.