

**Our Reference: J6764**

8 April 2021

General Manager  
Tweed Shire Council  
Via email: [tsc@tweed.nsw.gov.au](mailto:tsc@tweed.nsw.gov.au)

**Attention: Iain Lonsdale – Coordinator Strategic Planning and Urban Design Unit**

**Request for Planning Proposal (Minor LEP Amendment)  
51 Rock Road, Bungalora (Lot 2 DP 880732)**

Dear Iain,

The purpose of this submission is to formalise the advancement of a minor LEP amendment to the *Tweed Local Environmental Plan 2014* (Tweed LEP), relevant to the abovementioned property. We make this request as per Council's previous advices of 4 March 2021 on this matter.

The amendment is necessary to enable a direct and straightforward planning pathway for a proposed dwelling house on the lawfully created subject site. Whilst the issue of 'dwelling entitlements' is generally multi-faceted, as detailed within this submission, this particular circumstance is considered to:

- effectively have been created by ill-timing as opposed to a direct policy initiative,
- possess appropriate merit, and
- serve no meaningful purpose by sterilising the land from accommodating a dwelling house

In addition, the site has been tested by way of site analysis and a number of specialist studies (including onsite sewage management, contamination, cultural heritage and bushfire) to a Development Application (DA) level, which has confirmed the suitability of the site to accommodate a dwelling house. Further information regarding the history of the subject land, applicable constraints, and its relationship with the strategic planning framework is provided overpage for Council's consideration, along with the DA documentation prepared to-date.

We understand and acknowledge Council's previously advised position that whilst the proposal is considered to possess sufficient merit and is within the scope of a 'minor' LEP amendment, that current resourcing limitations will restrict the advancement of the proposal to a formal Council report (and anticipated resolution) until July 2021. We welcome the opportunity to discuss the specifics of Council's processes and any potential to expedite the process through supporting Council's resources. To facilitate these discussions, please do not hesitate to contact me at your earliest convenience. Look forward to hearing from you soon.

Yours sincerely



**Luke Blandford**  
**PLANIT CONSULTING**

## The Subject Site

### *History*

The subject site has no building approvals however has been subject to several subdivision approvals. As detailed within Council's Dwelling Entitlement Search correspondence of 11 June 2020, the subject site was created under the *Tweed Local Environmental Plan 1987*, which required a variation to a minimum lot size standard (clause 25) though *State Environmental Planning Policy No. 1 – Development Standards (SEPP 1)*. Whilst concurrence to create a lot less than the minimum lot size under clause 25(1) was issued, the subdivision DA at the time did not seek consent and concurrence through a SEPP 1 objection to clause 25(3) for a dwelling to be located on the undersized lot. Accordingly, despite consent being provided to create the lot for rural living type opportunities, and the logical timing of an objection to clause 25(3) being when the dwelling is proposed, this provision is no longer available and Council's Development Assessment Unit (DAU) consider the lot does not possess a 'dwelling entitlement'.

Whilst the proponent disagrees with Council's interpretation, there is presently no planning framework afforded by Council, outside of providing legal analysis and advice, to test the merit of a 'dwelling entitlement'. This position is confirmed through Council's email of 10 November 2020, which advised of the rejection to the lodgement of a Development Application for a dwelling house on this site.

### *Description & Attributes*

The subject site is appropriately 4.135ha in size, has vehicular access from Rock Road and is afforded electricity and telecommunications services. Consistent with the wider locale, no reticulated water or sewer is available. The subject site enjoys a gentle topography at its central peak, which falls away more steeply to the north, south and west where the property interfaces Rock Road.

Vegetation is scattered along the western boundary consisting of mixed Camphor Laurel, lantana and rainforest regrowth over grassland. To the south, vegetation consists of rainforest vegetation with dense Camphor Laurel and lantana along the edges closest to the proposed dwelling. The rainforest to the southern end of the site is mapped as having High Biodiversity Value. The subject site is also mapped as being within a vegetation buffer for bushfire prone land. A bushfire risk assessment report has been prepared by a Bushfire Planning and Design (BPAD) Accredited Practitioner, who has concluded that the provision of a dwelling house can satisfy the aims and objectives of Planning for Bushfire Protection 2019 and performance solutions are not required.

The site is mapped as being within a Place of Aboriginal Heritage Significance. A report has been prepared by the Tweed Byron Local Aboriginal Land Council which assesses the site suitability for a dwelling house. A site visit has been completed with no evidence of heritage artefacts being sighted.

The subject site is located within a wider locale which is characterised by rural living lifestyles. Of particular note, the subject lot is the only property on Rock Road and within the lots created through the 1991 subdivision that does not accommodate a dwelling house. This 1991 subdivision effectively created the current land tenure and subdivision pattern. Properties fronting Bilambil, Terranora, Balfours and Rock Road, as well as Beltana Drive are predominately less than 10ha in size, accommodate rural housing, sporadic and broader corridor vegetation and hobby-scale agricultural pursuits.

## Strategic Policy Framework

The subject land and request for Planning Proposal is affected by a number of Ministerial Directions and State Environmental Planning Policy's, as well as the North Coast Regional Plan 2036 and Rural Land Strategy 2020–2036. Discussion regarding the proposal's compliance with key elements of the application framework is detailed as follows.

**Ministerial Directions** – The request for planning proposal is considered to satisfy all relevant ministerial directions, specifically:

- **1.2 Rural Zones** – The request does not rezone land; however, it does theoretically increase the permissible density of the subject site. As discussed in greater detail later in this correspondence, the RLS seeks to achieve a harmonious balance between rural and environmental pursuits, including additional dwellings. The RLS has

been endorsed by NSW Department of Planning, Industry and Environment, subject to a number of amendments. The site and adjoining land is not identified as workable productive land and development of the site for a dwelling house would not impact agricultural practices, as there are none in the area. Accordingly, the inconsistency is of minor significance and the inconsistency with this Direction is justified, as it will not reduce the agricultural production values of the site or locale and is considered to be broadly consistent with the North Coast Regional Plan 2036 and Tweed Rural Land Strategy 2020 – 2036 (RLS).

- **1.5 Rural Lands** – By enabling a dwelling house within the Tweed LEP framework the underlying objectives for Rural Lands are not undermined, specifically:
  - No inconsistency with the North Coast Regional Plan is created
  - No agriculture or primary production land uses of significance are undertaken in the locality, nor is the locality strategically identified for higher order agricultural activity (i.e. Important Farmland mapping, industry-clusters or the like)
  - Sufficient buffer areas are available to accommodate suitable ecological buffers on-site.
  - The site does not possess land constraints that are adverse to the provision of an appropriately sited dwelling house
  - The locality is already highly fragmented and accommodates rural lifestyle outcomes
  - Sufficient buffer areas are available to accommodate suitable buffers on-site to mitigate land use conflict and enable farming on adjoining lands should these land uses eventuate in the future.

In light of the above, the inconsistency with this Direction is justified, as it will not increase land fragmentation or land use conflict; nor will the ability to permit a dwelling house adversely affect the operation and viability of existing and future rural land uses and related enterprises. Accordingly, the inconsistency is of minor significance.

- **2.3 Heritage Conservation** – The site is identified as an Aboriginal Place of Heritage Significance within the Tweed Aboriginal Cultural Heritage Management Plan 2018. An AHIMS Search has been undertaken to determine the presence and location of any registered objects or places (0 identified). Further, consultation, in the form of a Site Visit and Cultural Heritage Advice Report, with the Tweed Byron Local Aboriginal Land Council (TBLALC) has been undertaken. This process has concluded that a dwelling house presents a low risk of harm to Aboriginal cultural heritage and further assessment by an archaeologist is not required.

At this time we are not aware of an intention from Council to formally elevate and identify/map Aboriginal Places of Heritage Significance within the formal LEP framework. Should Council intend on pursuing this process, no objection is raised inclusion of the subject site within Schedule 5 Environmental Heritage of the Tweed Local Environmental Plan 2014 accordingly. In light of the above, the inconsistency is of minor significance.

- **2.6 Remediation of Contaminated Land** – a Preliminary Site Investigation has been undertaken, concluding that the subject site does not contain contaminants which pose a risk to human health or safety.
- **4.1 Acid Sulfate Soils** – The subject site is mapped as being potentially affected by Class 5 acid sulfate soils. Class 5 is generally applied as a buffer to land which adjoins land likely to contain acid sulfate soils and the potential to identify acid sulfate soils on the land is therefore low. Earthworks associated with a future dwelling house is unlikely to encounter groundwater, or involve significant earthworks in light of Council's existing planning framework (i.e. LEP and DCP provisions).
- **4.3 Flood Prone Land** – The subject site is not identified as flood prone and the intended house site is elevated well above any localised flood levels that may occur.
- **4.4 Planning for Bushfire Protection** – A Bushfire Risk Assessment Report has been prepared for the subject site identifying that the provisions of Planning for Bushfire Protection 2019 can be upheld and additional consultation is anticipated post issue of a Gateway Determination.

- **5.3 Farmland of State and Regional Significance on the NSW Far North Coast** – The subject site is not identified as possessing farmland of state or regional significance, nor sufficiently in proximity to impact agricultural pursuits on farmland of significance.
- **5.10 Implementation of Regional Plans** – The request is generally consistent with the provisions of the North Coast Regional Plan 2036, as discussed in detail further later in this correspondence.
- **6.3 Site Specific Provisions** – Whilst the request may be realised through an Additional Permitted Use provision, which in turn is site-specific, the proposal is ultimately considered to be consistent with this direction as its implementation comprises an enabling provision, as opposed to introducing additional and unnecessarily restrictive planning controls.

**State Environmental Planning Policies** – Various State Environmental Planning Policies (SEPPs) are broadly applicable to the request. Of particular relevance, the Koala Habitat Protection, Primary Production and Rural Development and Remediation of Land SEPPs ensure that development can occur without environmental, land use or contamination conflict. In addressing these provisions:

- a Preliminary Site Investigation has been undertaken, concluding that the subject site does not contain contaminants which pose a risk to human health or safety.
- the subject site does not adjoin working agricultural land and any future dwelling can be sited to include suitable land use buffers to neighbouring dwellings and should agricultural pursuits commence.
- no removal of Koala habitat is required to facilitate accommodating a dwelling house and supporting services.

In light of the above, the request is considered to be in keeping with the provisions of applicable SEPPs and satisfy their specific provisions.

**North Coast Regional Plan 2036** – The request for Planning Proposal is considered consistent with the provisions of the North Coast Regional Plan 2036, though noting limited policy direction or content of relevance. Broadly, the proposal will enable the continued protection and enhancement of productive agricultural lands and environmentally sustainable development by providing directing housing growth away from important farmland and the coastal strip. The future dwelling house can also occur without tree removal of significance and outside of sensitive environmental land, as detailed within the attached Development Application package.

**Rural Land Strategy 2020–2036** – The Tweed Rural Land Strategy (Tweed RLS) is the primary strategic document of relevance to the subject site and desired dwelling house outcome. The Tweed RLS acknowledges the diverse activities and lifestyles of Tweed's rural landscape and seeks to balance these sometimes-competing interests through strategic visioning and a raft of future actions. Specific to rural housing, the Tweed RLS includes Policy Direction 5 – Greater diversity of rural housing, which seeks to remove the dwelling entitlement 'process' through provision of mapping and reviewing potential for dwellings on undersized lots. In addition, a series of indirect actions are also proposed to uphold the wider policy directions, such as developing a section of the Development Control Plan for buffers and rural land related matters.

The review of undersized lots without a dwelling entitlement is detailed as Action 89, which specifically prescribes the preparation of guidelines for Planning Proposals seeking a dwelling entitlement for a single house. Action 89 is identified as a 'short-term' action however we understand investigations have not yet commenced. Whilst Action 89 provides a theoretical 'programmed' pathway, we request this amendment be pursued in advance of this action as:

1. There is presently no defined timeline of Action 89 being pursued and completed.
2. The subject site presents largely as an anomaly given the lot was initially created through the same subdivision process as the remainder of Rock Road properties, each of which have since obtained approvals for and accommodate dwelling houses.
3. Environmental assessment has been undertaken confirming that a dwelling house can occur on the site without impact.
4. The proposal does not conflict with any strategic policy or actions of relevance.

**Other Local Planning Policy** – The request for Planning Proposal is not specifically influenced by other applicable local planning policy, such as the Tweed Local Strategic Planning Statement or the Tweed Community Strategic Plan 2017 – 2027. Despite these policies possessing minimal relevant content, a positive contribution is made towards the broader goals by:

- Upholding no increase in the number of properties affected by over-floor flooding (as per 1.2 Asset Protection of the Community Strategic Plan)
- Increasing the supply and choice of housing and cater for future growth (as per 1.4 Managing Community Growth of the Community Strategic Plan)
- Providing a planning framework to ensure agricultural productive capacity is protected and rural land-use conflicts are avoided. (as per Action 10.4 of the Tweed Local Strategic Plan 2041)

In addition, the draft Tweed Scenic Landscape Strategy (draft SLS) identifies that the site may be visible from a number of Priority 1 and 2 viewpoints. The request in isolation does not give rise to scenic conflict, however does increase the likelihood of built structures and modification to the current visual experience of the site from public areas.

The majority of the site is elevated and has predominate northern and northwesterly aspects, whilst the priority viewpoints are located to the south, greater than 2.5km away with the exception of the Priority 2 Terranora Road linear viewpoint. Inspection from this viewpoint has confirmed the subject site is not currently visible due to existing vegetation and no land constraints have been identified that prohibit a future dwelling house from satisfying the scenic management principles within the draft SLS. Finally, any formal application for a dwelling will be subject to visual assessment as per Council's planning framework.

#### **The LEP amendment desired**

The purpose of this submission is to request the preparation of a Planning Proposal, by way of a 'minor' LEP Amendment process, to enable a direct and straightforward planning pathway for a proposed dwelling house at Lot 2 DP 880732, being 51 Rock Road, Bungalora. Whilst Council has traditionally enacted similar amendments through the inclusion of an 'Additional Permitted Use' provision, the amendment can also be implemented through a change to the minimum lot size map, nominating a minimum lot size equal to, or less than the current land area of the subject site.

#### **The strategic nexus for the amendment**

The Tweed Rural Land Strategy seeks to ensure rural housing is well located and designed to ensure protection of native vegetation, agricultural land, scenic amenity of the site and locality, consistent with the desired future character of the locality. Detailed assessment has been undertaken to demonstrate that this objective can be achieved, along with satisfying other applicable strategic and statutory influences. Whilst amending the applicable LEP framework could be delayed until Action 89 of the Tweed Rural Land Strategy is pursued, there is limited benefit in delaying specific actions to the subject site given the history and demonstrated merit of the subject site. Collectively, these factors establish the strategic nexus for the proposed amendment.

#### **Compliance with the applicable strategic planning framework**

The proposal upholds the strategic intent and objectives of the applicable strategic planning framework, such as the Tweed Rural Land Strategy, North Coast Regional Plan 2036, State Environmental Planning Policies and Ministerial Directions. Whilst some minor inconsistencies are identified, they are justified when applying the broad application to the localised context of the locality.

#### **Mitigation of any applicable site constraints**

No prohibitive or substantial site constraints are identified as applicable to the subject site which require specific strategic mitigation. Notwithstanding, should Council feel it appropriate to pursue amendments, such as inclusion of the Place of Aboriginal Heritage Significance or environmental mapping within the LEP simultaneous to enabling a dwelling house with development consent, no objection is raised at this time. Post any LEP amendment, the process of obtaining development consent provides a further opportunity to consider any mitigation measures to ensure a positive contribution to Tweed's rural landscape and dissolve any potential impacts.