

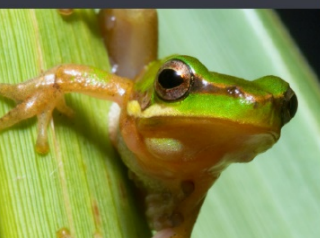
STATEMENT OF ENVIRONMENTAL EFFECTS

Proposed Dwelling House

51 Rock Road, Bungalora | Lot 2 DP880732

Prepared for Dainen Keogh & Claire Keogh
By Planit Consulting Pty Ltd

October 2020





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Executive Summary

This Statement of Environmental Effects (SEE) supports a Development Application that seeks to provide a new single storey dwelling house, and a new garage, swimming pool, shed and home office at 51 Rock Road, Bungalora. The proposal seeks consent for all activities associated with the creation of these structures, including site regrading, infrastructure provision, driveway access, construction of the new dwelling and shed and subsequently, occupation.

Bungalora is a suburb within the Tweed shire that is located approximately 10km south of the Queensland / New South Wales border and caters to a small population of residents. The locality is primarily made up of larger residential allotments within a rural setting. The community values its natural environment and scenic amenity qualities. The proposed development is considered to be consistent with the surrounding character and maintains the community's values and scenic amenity qualities of the land.

Whilst Council has provided correspondence to the applicant indicating that the subject site does not have the benefit of a dwelling entitlement, this Statement of Environmental Effects sets out merit for a dwelling house on this site. An overview of the site history is provided and a detailed analysis of the planning legislation, strategies and policies which apply to the land establishes the grounds upon which Council can support the proposed development in this location.

- In particular, this lot was created as a result of historical subdivision approvals issued by Council and is currently the only lot within the street to not have an established dwelling located on it.
- The historical approvals also identify the initial dwelling entitlement would be ideally located in the same location as the proposed dwelling house.
- The most recent subdivision approval issued by the Council required the lot to be connected to relevant utilities and services, inferring that the lot would be entitled to connect those utilities and services to a dwelling.

To remove any uncertainty, the Development Application is also supported by a Clause 4.6 application to vary the minimum lot size provision for permitting a dwelling on this site, to demonstrate that upholding this standard is unnecessary in the case.

The 4.135Ha² site has vehicular access achieved from Rock Road. The land is mapped as being within a vegetation buffer for bushfire prone land and is positioned on top of Balfour Hill with expansive views across Tweed Shire and towards the Gold Coast in the north. The surrounding area primarily consists of residential developments with larger homes in a rural setting and there are limited agricultural/farming land uses in the area. The site is located within 23 mapped Viewsheds (8 Priority 1 Viewsheds and 15 Priority 2 Viewsheds) however, the majority of these are kilometres away from the subject site. The design of the buildings has taken location into consideration and with the single storey height, large setbacks, quality design of the building, use of lightweight materials and light colours and associated landscaping, any potential for visual impact has been minimised. Vegetation at the southern and western ends of the site have been avoided to maintain the landscape values of the land. The dwelling is also located at the ridge of the hill to avoid potential bushfire impacts, and to be in close proximity to the bore onsite to supply water.

Portions of the site and adjoining properties were historically used as a banana plantation and cucumber plantation and as such the application is supported by a Preliminary Site Investigation report regarding potential land contamination. This report confirms that samples collected onsite are below health investigation levels for residential development.

The proposal is also supported by a Bushfire Assessment Report, Onsite Sewage Management System review and an Aboriginal Cultural Heritage Assessment to address the respective constraints applied to the land. These reports conclude the proposed layout and design is an acceptable form of development for the site and the constraints are able to be managed in a manner to ensure suitable residential outcomes which maintain the rural landscape values and avoid impacts on the environment and surrounding residential developments as well as potential cultural heritage impacts.

The proposal is supported by a BASIX Certificate confirming the relevant energy efficiency scores have been met. The Development Application exhibits compliance with the *Tweed Local Environmental Plan 2014*, as well as the majority of development control, design specification provisions and policy guidelines.

Ultimately this Statement of Environmental Effects concludes that the proposal satisfies the relevant provisions of the *Environmental Planning and Assessment Act 1979* and is within the public interest.

1. Background

1.1 Introduction

This Statement of Environmental Effects (SEE) relates to a proposed new single storey dwelling house, garage, swimming pool, shed and home office. The proposal seeks consent for all activities associated with the creation of these structures, site regrading, infrastructure provision, driveway access, construction of the buildings and subsequently, occupation.

Approval is sought pursuant to Section 4.12 of the *Environmental Planning & Assessment Act, 1979* (the Act) for the proposed development. Certificates and ancillary approvals associated to the physical construction works will be sought under subsequent applications. This development application is lodged simultaneously with a Clause 4.6 variation application.

The purpose of this report is to articulate the application, consider its impacts and satisfy the provisions and heads of consideration of the applicable environmental planning framework. This report should be read in conjunction with the following documentation

Development Application Package

Architectural Plans	Shane Denham Architects
Survey Plan	Newnham Karl Weir & Partners Pty Ltd
Onsite Sewage Management Design Report	HMC Environmental Consulting Pty Ltd
Preliminary Site Investigation	HMC Environmental Consulting Pty Ltd
AHIMS Web Services Search Results	Search by: Planit Consulting
Bushfire Assessment Report	Bushfire Risk
BASIX and NatHERS Certificates	Cyber Energy
Site Visit and Cultural Heritage Advice Report	Tweed Byron Local Aboriginal Land Council (TLBALC) – Cultural Heritage Unit
BOSET Report	Search by: Planit Consulting
Acid Sulfate Soils Minor Works Template	Completed by: Planit Consulting

1.2 Public Notification

Council's Community Engagement and Participation Plan 2019–2024 indicates (Part C2, Appendix 2) the proposal will require notification. The applicable fees for this notification will be paid upon Council's review of the documents pertaining to this application.

1.3 Consent Authority

When considering the proposal and the provisions of *State Environmental Planning Policy (State and Regional Development) 2011*, Tweed Shire Council is identified as the consent authority for this application.

1.4 Designated Development

Schedule 3 of the *Environmental Planning and Assessment Regulations 2000* (the Regulations) indicates development that is classified as Designated Development. The proposed development does not exceed the threshold criteria within Schedule 3 of the Regulations to be considered Designated Development.

1.5 Integrated Development

A review of the proposed development in relation to Section 4.46 of the Act has been conducted to determine if it is classified as Integrated Development for the purposes of Council's assessment. This review found that the proposal is not integrated development for the purposes of Council's assessment.

Of note, while the proposal does include works within a bushfire prone buffer area, the land uses/development sought under this Development Application does not trigger referral requirements in accordance with the *Rural Fires Act 1997*.

2. Site & Context

2.1 Locality

Bungalora is a suburb within the Tweed shire that is located approximately 10km south of the Queensland / New South Wales border and caters to a small population of residents. The locality is primarily made up of larger residential allotments within a rural setting. The community values its natural environment and scenic amenity qualities. The site is approximately 10km from the Pacific Ocean coastline. The suburb lies between Duroby, Bilambil and North Tumbulgum. Schools, retail facilities and other commercial services are available in Terranora to the east to provide essential services for the Bungalora population. The surrounding sites have formerly been used for intensive agricultural purposes in particular a banana plantation.

In terms of built form and character, the surrounding developments are primarily 1 and 2x storey dwellings and of a larger scale to reflect the rural landscape setting. The other two storey developments within Rock Road have generally been designed and located to reflect their site topography and follow the contour of the land. Many properties in the area have numerous sheds/outbuildings associated with the primary dwelling.

2.2 Site Description

The land subject to this application is known as 51 Rock Road, Bungalora and legally described as Lot 2 DP 880732. The 4.135Ha² site has vehicular access achieved from Rock Road. The land is mapped as being within a vegetation buffer for bushfire prone land and is positioned on top of Balfour Hill. The site benefits from expansive views across Tweed Shire and towards the Gold Coast in the north. Tweed Shire Council mapping indicates the site is within 23x view sheds, being 8x Priority 1 viewsheds and 15x Priority 2 viewsheds.

Due to its location on top of Balfour Hill, the topography of the land gently slopes downhill away from the proposed dwelling towards the north and the south and slopes steeply to the west where it adjoins the road. The site is currently capable of being serviced with electricity and telecommunications connections and comprises no permanent structures. There is no access to town water supply and like the surrounding rural sites, onsite sewer can be provided.

The site has formerly been used for intensive agricultural purposes. In particular a banana plantation was located on Lot 1 to the north and cucumbers were planted on the subject site. Given the former agricultural use and its potential to have introduced potential contaminants into the soil onsite, a preliminary site investigation been carried out. This investigation has determined that the subject site does not contain contaminants which pose a risk to human health or safety. For further detail, refer to the attached report provided by HMC Environmental Consulting.

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 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 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 the development. A site visit has been completed with no evidence of heritage artefacts being sighted.



Figure One: Aerial view of subject site (Source: SixMaps retrieved 1/10/2020)

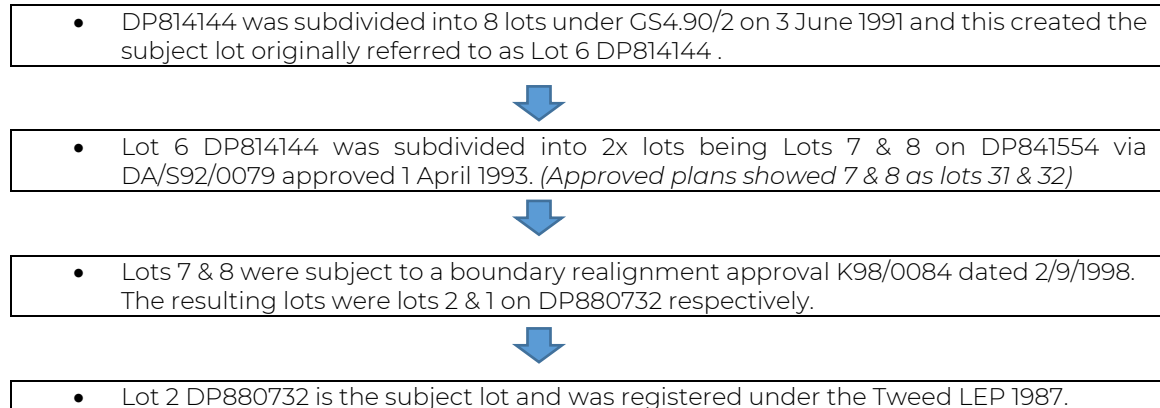
2.3 Site History and Dwelling entitlement

The applicant has received correspondence from the Council indicating that the subject site does not have a dwelling entitlement due to not meeting the requirements of Clause 4.2B(3)(c) of the *Tweed Local Environmental Plan 2014*. Contrary to this correspondence, this SEE sets out the history of the subject site and asserts that a dwelling entitlement does appear to apply to the subject lot and further to this, considers that weight should be given to the merits of the subject site's suitability to be developed with a single residential dwelling house.

Clause 5.16(4) of the Tweed LEP 2014 sets out the matters to consider for a Dwelling on rural land and Clause 4.2B sets out the requirements that need to be met for a Dwelling to be erected on land in the Rural landscape zone. Further discussion is provided within section 4.3 of this SEE. In conjunction with the assessment provided in this SEE, a clause 4.6 application to vary a development standard is submitted concurrently with this development application should Council confirm its formal position.

Site history

The subject site has no building approvals however has been subject to several subdivision approvals with the following timeline:



A full creation tree for the subdivision and dwelling approval history of all lots created by the 1991 approval is provided as **Annexure A** for reference purposes.

A dwelling entitlement applied to the original Lot and Plan being Lot 6 DP814144 and has been carried through the various subdivision approvals of that parent lot until the subject lot currently registered today. The LEP in place at the time of the registration of the lot in 1998 was the Tweed LEP 1987 and the following clause was relevant at the time of the subdivision.

"The requirements of Clause 25 of the Tweed LEP 1987 are:

Subdivision and dwelling-houses in Zone No. 1(a) – 40 hectare allotments

- 25(1) The Council shall not consent to subdivision of land within Zone No. 1(a) unless the area of each allotment to be created is not less than 40 hectares.*
- 25(2) Where allotments are to be created in accordance with this clause and will have frontage to a designated road, that frontage shall be not less than 400 metres.*
- 25(3) A person shall not erect a dwelling-house on an allotment of land to which this clause applies unless it has an area of not less than 40 hectares.*
- 25(4) Nothing in this clause prevents a person from erecting a dwelling house on an allotment of land lawfully created, or the creation of which was lawfully consented to by the council, before the appointed day and upon which a dwelling-house could have lawfully been erected immediately prior to the appointed day.*

Whilst the original subdivision approval in 1991 did seek approval for a variation to Clause 25(1) to have less than 40 Hectares, it is acknowledged that the applicant did not request a variation to Clause 25(3) to allow a dwelling to be constructed on a lot that contains less than 40 hectares of land. A dwelling entitlement applied to 7 of the 8 lots created.

Despite a variation of Clause 25(3) not being sought, as part of correspondence in relation to the DA/292/0079, the Council issued a letter (**Annexure B**) dated 19 February 1993 confirming a dwelling entitlement on proposed Lot 32 (the subject site) and the approved plans show the proposed dwelling site locations on both lots. Refer to figures two and three on the following page:

3. Lot 31 was the only lot sampled for past contamination. Justification for that is threefold. Firstly the lot being subdivided (lot 6 DP 814144) was created by recent subdivision and presently enjoys a dwelling entitlement with the approved dwelling site being on proposed lot 32. In other words it was deemed necessary only to sample the new lot being created. Secondly, that approach was confirmed in discussions with your Environmental Health Unit. Thirdly there is no history of banana cultivation on proposed lot 32. Inspection of the aerial photograph on your file will confirm that.

Figure two: Extract from Council's letter dated 19 February 1993

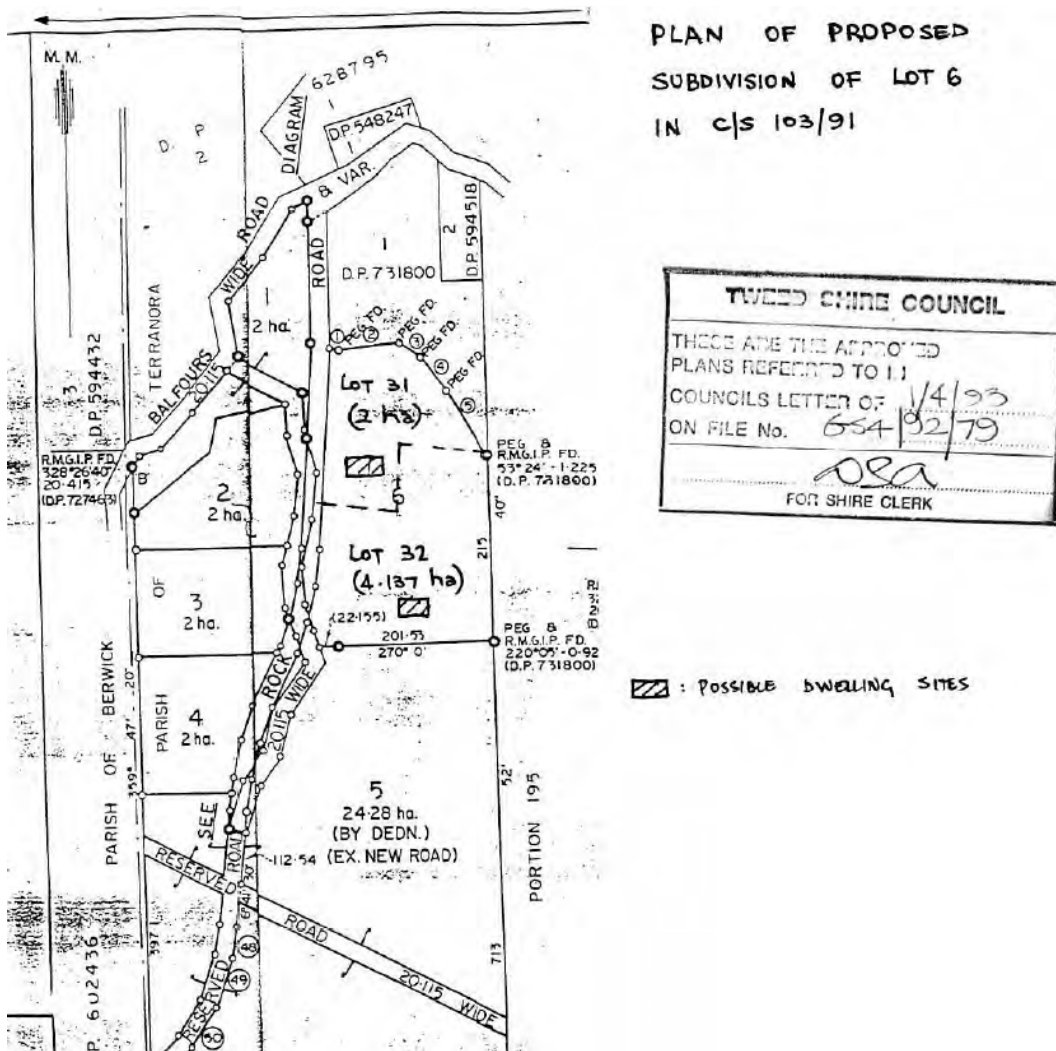


Figure three: Possible dwelling sites for 2 lot subdivision of lot 6 DP814144

Concurrence from the Department of Planning was issued 29 March 1993 in relation to the SEPP 1 objection. It is noted in the correspondence from the Department that:

4. *Council is reminded that concurrence has been granted for subdivision only in response to the development application submitted. Any application for the erection of dwellings on either lot 31 or 32 must be subject to a new development application and concurrence under State Environmental Planning Policy No. 1.*

It is acknowledged that the Department of Planning states that an application for the erection of dwellings on Lot 31 of Lot 32 (subject lot) is to be subject to a new development application. There is no reference to a dwelling entitlement not being retained for the site, but simply that an application is to be submitted for consideration by the Council. This is the subject development application which will allow the Dwelling house to be considered on its merits and suitability for the subject site.

Whilst a boundary realignment subdivision approval K98/0084 dated 2/9/1998 has also been issued by Council in relation to both Lots 31 & 32 (now lots 1 & 2 DP880732), it is unknown why this would remove a dwelling entitlement over the subject site. Lot 1 DP880732 has had a subsequent development application DA K98/0447 approved for a dwelling house on 7 October 1998. This application did not require a variation to Clause 25(3) under the Tweed LEP 1987, indicating both: that this site retained its entitlement despite the boundary adjustment and that the merit for a dwelling on the land could be agreed.

Further to this though, the owner of Lot 1 has also previously sought legal advice and confirmation from the Council regarding the approval of the dwelling on that lot to ensure that the approval was lawful and that there was a Dwelling entitlement to retain. In 2005, the Manager of Development Assessment for Tweed Shire Council issued a letter dated 9 September 2005 that with regards to Lot 1 DP880732, states as follows:

"The lot was created as part of a Council approved subdivision and therefore meets the dwelling entitlement protection provisions of Clause 57 of the Tweed Local Environmental Plan 2000."

Considering the findings for Lot 1 DP 880732, it would seem suitable that a dwelling entitlement also exists for Lot 2 DP880732.

All the lots within the original subdivision have the benefit of a Dwelling house being approved except for the subject lot. When the subdivisions were approved and the boundary realignment was approved, the applicable LEP was the Tweed LEP 1987 and the purpose of each lot was not for farmland but for residential development. There is nowhere in the approval documentation that explicitly states that a Dwelling entitlement does not apply to the subject lot.

This SEE now seeks consent for a Dwelling house to be located on the subject lot (Lot 2 DP 880732).

2.3 Legislative Planning Controls & Site Constraints

The subject land is mapped with the following applicable planning provisions:

- RU2 Rural Landscape zone
- Maximum Height of Building of 10m
- Floor Space Ratio: N/A
- Class 5 Acid Sulfate Soils
- Bushfire Prone Land (Vegetation Buffer- within 100m of Category 1 Vegetation)
- Aboriginal Place of Heritage Significance

- Obstacle Limitations surface (zone)

The site does contain vegetation with high biodiversity value or State significance - (Refer to attached BOSET Report).

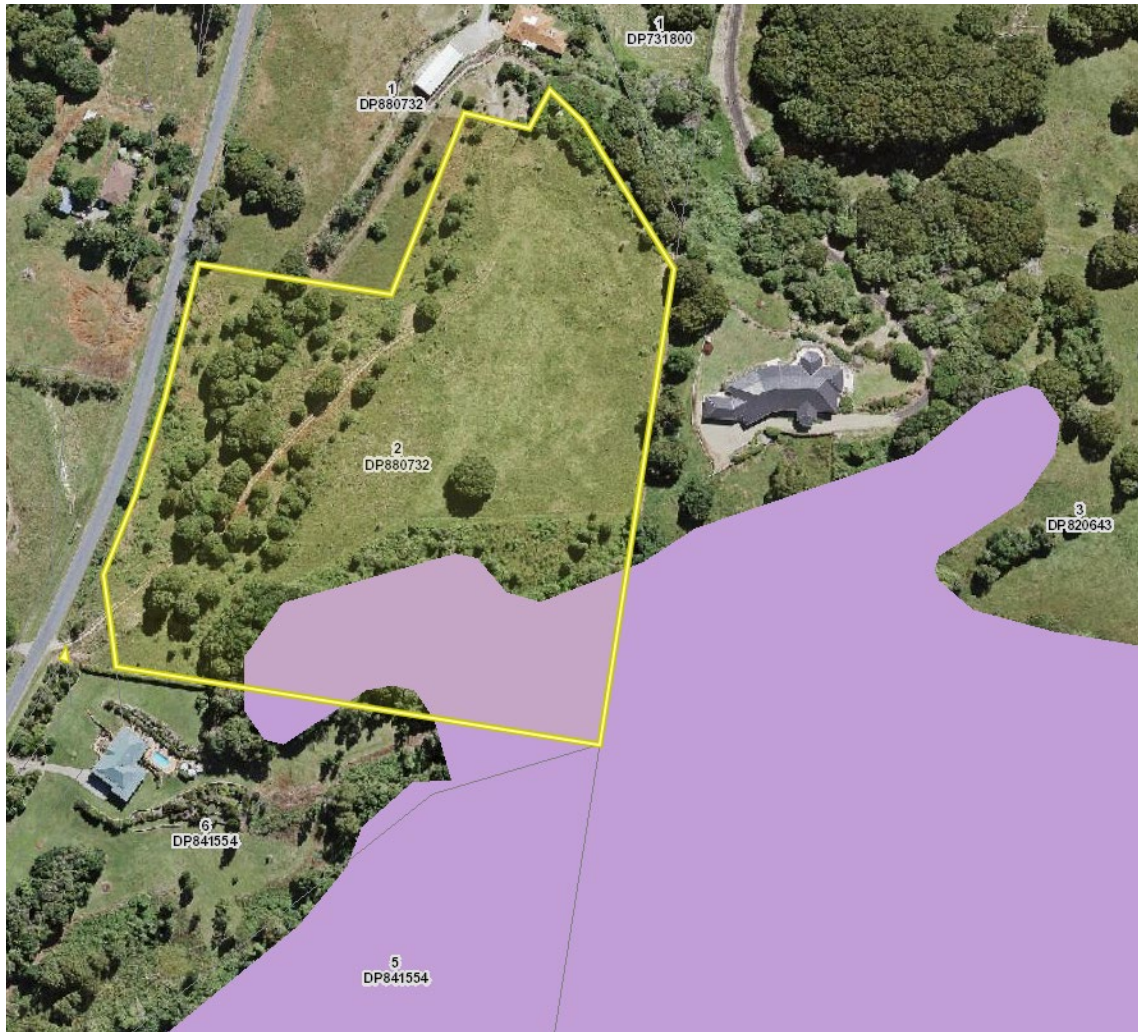


Figure four: BOSET Biodiversity vegetation mapping

The proposed works are outside of areas mapped with vegetation containing high biodiversity value.



Figure Five: Bushfire Hazard Mapping for Lot 2 DP880732 (Source: NSW ePlanning Spatial Viewer)

The proposed buildings are located within the bushfire prone buffer area. A bushfire report is attached to this development application. The relevant Bushfire attack levels for the proposed buildings are as follows:

- BAL-29 – entire garage;
- BAL-19 – entire remaining dwelling structure
- BAL-LOW – office/shed

By implementing the recommendations of the attached Bushfire Report the development mitigates and avoid impacts associated with the Bushfire Hazard constraint that applies to the land.

The subject site is also mapped as being within a known Aboriginal Place of Heritage Significance as seen in figure six below:



Figure Six: Aboriginal Cultural Heritage Management Plan Mapping for the Subject site.

The development application is supported by a Site visit and Cultural Heritage Advice Report prepared by the Tweed Byron Local Aboriginal Land Council.

The site is located within a Obstacle Limitation surface zone and further discussion is provided in section 4.3.11 of this SEE.

3. Proposed Development

3.1 Proposal Details

This SEE supports a Development Application for a proposed 4x bedroom single storey dwelling house, a double garage, swimming pool and associated shed and home office. The proposal seeks to undertake all associated works associated with the construction of the buildings and the use as dwelling house. It is noted that the home occupation (home office) is permitted without consent.

The key elements being proposed are summarised below:

Proposal Summary:	
Dwelling House	4x Bedroom Gross Floor Area – 328.5m ² Floor Space Ratio- 0.005:1 Height: 4.75metres. Building Footprint: 0.78% Double garage for 2 covered car parking spaces
Shed / Home Office	Gross Floor Area – 198.5m ² Home office GFA – 35m ² Floor Space Ratio- 0.0008:1 Height: Ridgeline 3.85metres. Building Footprint: 0.475%

The following figures (7-11) provide a visual representation of the development:



Figure Seven: 3D Image of the proposed dwelling -North west perspective (Source: Shane Denham Architectural drawings)



ENTRY PERSPECTIVE

Figure Eight: 3D Images of the proposed dwelling –entry perspective (Source: Shane Denham Architectural drawings)



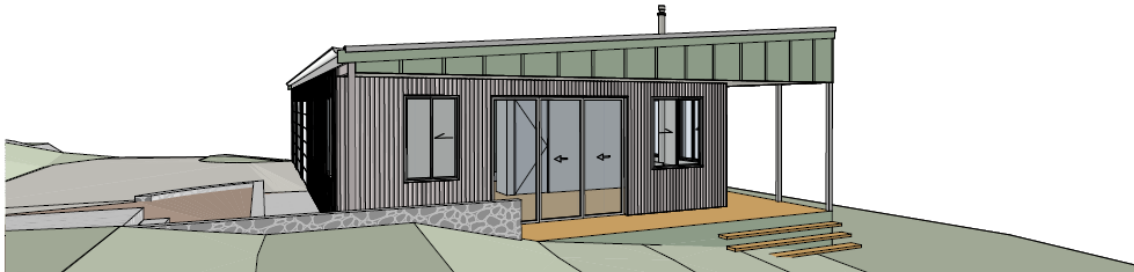
NORTH PERSPECTIVE



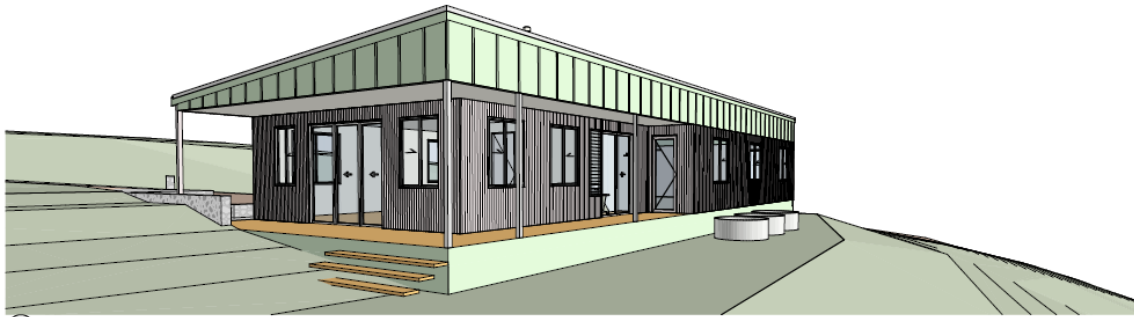
POOL PERSPECTIVE

3D VIEWS FOR ILLU

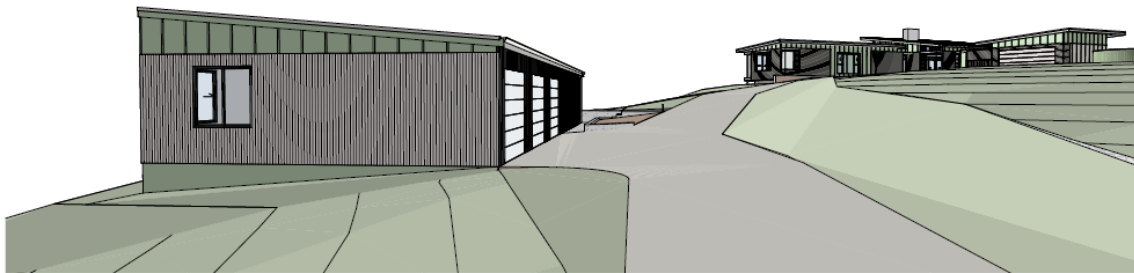
Figure Nine: 3D Images of the proposed dwelling –North perspective & Pool perspective (Source: Shane Denham Architectural drawings)



Perspective Shed 01



Perspective Shed 02



Perspective Shed 03

Figure Ten: Perspectives of the proposed shed / home office (Source: Shane Denham Architects - Architectural drawings)

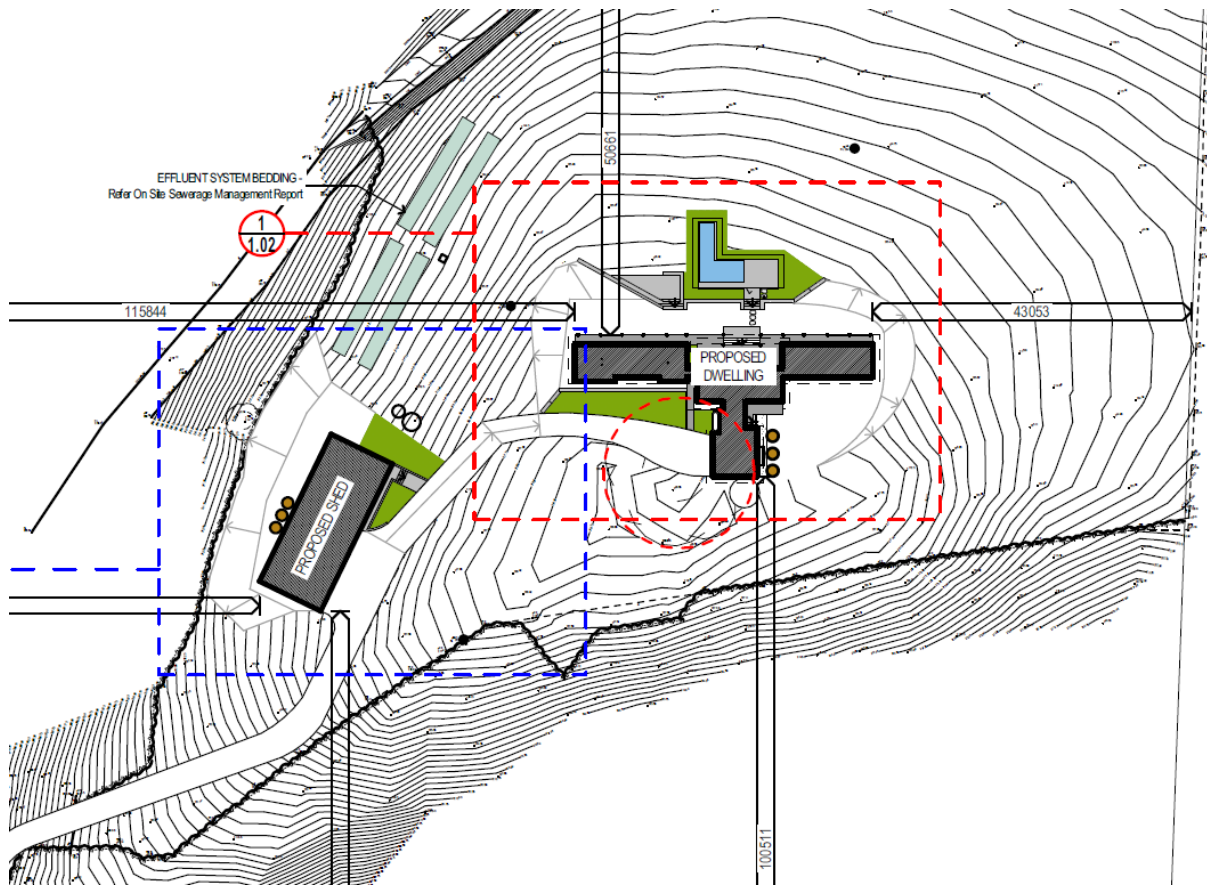


Figure Eleven: Proposed site plan (Source: Shane Denham Architects- Architectural drawings)

3.2 Building Siting, Design & Character

The dwelling is single storey and stretches in a “T” shape with a central living area and an east and west wing of the house. Each wing contains two bedrooms and a bathroom. The west wing contains the Master bedroom including ensuite and a study and bedroom #2. The east wing contains bedrooms #3 and #4 and a media room. All bedrooms have access to the primary outdoor living area via the verandah which is located on the northern side of the building and maximises the amount of sunlight available for residents.

The facades of the dwelling incorporate a variety of materials including linea weatherboard, metal cladding, and compressed fibre-cement. The roof incorporates a skillion roof design so that when viewed from the east, the dwelling does not present as a bulky dominant structure for the nearest adjoining property at 63 Balfours Road Bungalora. In combination with the generous setbacks provided, these architectural design features ensure that the design of the building does not introduce adverse bulk, scale and visual amenity impacts on the surrounding character of the area. Landscaped garden beds have been incorporated into the design and are appropriately located around both the dwelling and the shed to maintain a positive visual amenity outcome.

Being located at the ridge of the hill, has resulted in the Dwelling being within numerous viewsheds. The viewsheds however, can be discounted due to the distance to the various points around the Shire. The closest priority 1 viewshed is at least 3km away from the subject site. The nearest priority 2 viewshed is from

Tweed Coast Road and is 1.9km away from the subject site. Given the location of viewsheds, and the scale of the proposal (low- rise buildings), plus the vegetation being retained onsite assisting to maintain the scenic amenity, these fields can be discounted. Long views are not likely impacted by the proposal and short views will receive minimal impact.

The shed / home office outbuilding has been located a short distance from the proposed dwelling and is designed with similar materials and landscaped garden beds to ensure the development as a whole presents minimal amenity impacts to the character of the area.

Overall the site is considered suitable for residential land use as it is not large enough to accommodate significant agricultural or farming land uses. Whilst grazing is possible, this is not ideal due to the slop of land at the access point to the site and the value given to the vegetation onsite.

A **BASIX Certificate** has been issued, confirming the new dwellings meet the relevant energy efficiency targets.

Detailed construction design and management plans will form part of any future Construction Certification application. Appropriate conditions of consent will ensure that construction works will have minimal environmental impact.

3.3 Access and Carparking

The site will have a new driveway which connects to the existing access point at Rock Road along the western boundary. It is intended that the driveway follows the natural contour of the land to minimise earthworks onsite. The access location is considered to be safe as is not in close proximity to any access points for adjoining properties.

Two covered car-parking spaces will be provided within the internal double garage located on the southern side of the dwelling. Sufficient manoeuvring space has been provided next to the dwelling to allow for the residents to exit the site in a forward manner.

The Bushfire report submitted with this development application includes recommendations for the proposed access to be designed in accordance with the relevant acceptable solutions specified within Section .7 Residential Infill Development of Planning for Bushfire Protection 2019. The access will be constructed to meet these requirements to ensure that firefighting appliances can safely gain access to the dwelling and manoeuvre onsite.

3.4 Earthworks

There are earthworks proposed to establish the building platforms and access/driveway into the site. Minor retaining walls under 1m in height are incorporated into the dwelling design to assist with landscaping. Around the shed/home office, the land will include 1:4 batters. The new access and driveway is proposed on the steepest part of the subject site and as a result, the maximum grade will be 21% (1:4.7). Maximum cut is 1.2m depth and the maximum fill is to be 1.1m in height. The site is not identified as being subject to instability. Erosion and sediment control measures will be implemented as part of the construction certificate process to ensure no impacts to adjoining residents and the surrounding environment.

3.5 Servicing

The dwelling and home office amenities will have an onsite sewer management facility which has been designed by HMC Environmental Consulting Pty Ltd. A land application area (183m² in area) has been nominated beside the proposed shed. A 4000L septic tank will collect all wastewater for the proposed dwelling. Further detail regarding the design of the sewage management system is in the attached report prepared by HMC Environmental Consulting Pty Ltd.

In terms of electricity supply for the site the dwelling house will be utilising a 10KW Off-grid solar power system as an energy efficient dwelling. It is intended that the Dwelling be self-sufficient in terms of servicing. A dial before you dig search has been completed and there is both electricity and telecommunications supply available within Rock Road.

In terms of water supply, there is no ability to connect to town water supply. The Dwelling house will be connected to 2x 20,000L Tanks for Rain Water and 1x 2,000L Tank for Bore Water (Backup Supply & Gardens) and a Bore Pump. The design of the rainwater tanks will be finalised at construction stage upon approval of the dwelling house. The Bore water tank and pump will connect to the bore onsite.

The previous subdivision required the lot to be serviced for Telecommunications. The proposed dwelling will utilise this connection.

3.6 Waste Management

In terms of operation, space is provided inside the dwelling for the temporary storage of waste and recyclables.

Sufficient space is available onsite for waste collection bins to service the development. These bins will be concealed from public view with manoeuvrability afforded to the street on collection days via the driveway.

3.7 Tree removal and landscaping

To facilitate the new dwelling and shed 2x Camphor laurel trees require removal from the site. No indigenous vegetation is proposed to be removed from the site. It is anticipated that non-natives will be removed to accommodate the proposed driveway access.

To offset the loss of this vegetation and ensure the landscape character is maintained, the proposed site plan has identified garden beds to be located around the perimeter of the proposed buildings to maintain the amenity expected for this area and to complement the built form onsite.

The trees being removed are not considered to be of environmental significance and are not located within the areas of the site that contain vegetation mapped as having biodiversity values.

3.8 Home Office

Whilst consent is not required for the Home occupation component, it is relevant to include discussion of its acceptability to locate the office next to shed. The proposed shed will have a Home office component attached to it to allow for the owner to work in the shed and office away from the main living areas. The home office and shed also have shower and toilet facilities available. The applicant runs a contracting firm that supplies services to the Telecommunications Industry, anything from building radio facilities to

compliance and corporate strategy. The shed will be used for storing vehicles and tools while they are not in use out in the field. The only daily operational activity that will be conducted that is business related will be computer based office work.

The total floor area of the home office is 35m² which is under the 40m² floor area requirements for Home businesses under the Tweed LEP 2014. The home office will be utilised by the occupants of the dwelling and no external staff members are proposed. All other staff associated with the business are teleworkers based around the country. There are no kitchen facilities proposed in the home office and there is no signage or display of goods proposed.

4. Assessment

4.1 Environmental Planning & Assessment Act 1979

The proposal constitutes 'development' as defined by the *Environmental Planning and Assessment Act 1979 (The Act)* and requires development consent as per the *Tweed Local Environmental Plan 2014*.

Section 4.15 of the Act establishes the assessment process applicable to development applications, which are addressed, in the same order, below.

4.2 State Environmental Planning Policies

Whilst a variety of State Environmental Planning Policies (SEPPs) are applicable to the land, the following provides an assessment of those with relevance to the proposal.

4.2.1 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

The aim of this policy is to encourage sustainable residential development by requiring applicants to submit a list of commitments as to the manner in which the development will be carried out. A current BASIX certificate has been provided demonstrating compliance with the established targets. The dwelling is intended to be self-sufficient in terms of energy supply with off-grid solar power system. It is also utilising the onsite bore and proposed rainwater tanks to supply water for the dwelling. The orientation of the building maximises access to sunlight and the glazing treatments proposed ensure that the dwelling retains heat and is overall successful at achieving an environmentally sustainable residence.

4.2.2 State Environmental Planning Policy 55 Remediation of Land

Clause 7 of SEPP 55 details that a consent authority must not consent to the carrying out of any development on land unless it has considered whether the land is contaminated. In this regard, the subject site has previously been used as a cucumber plantation. Given this former agricultural use and its potential to have introduced potential contaminants into the soil onsite, a Preliminary site investigation been carried out. This investigation has determined that the subject site does not contain contaminants which pose a risk to human health or safety. For further detail, refer to the attached report provided by HMC environmental consulting dated September 2020.

Accordingly, the proposal is considered to satisfy the provisions of SEPP 55.

4.2.3 State Environmental Planning Policy (Infrastructure) 2017

State Environmental Planning Policy (Infrastructure) 2007 applies to the entire state and in this case *Division 4 Electricity generating works or solar energy systems* has been considered in regards to the

proposed development due to dwelling being connected to a solar energy system off-grid for power generation. Clause 34 sets out development that is permitted with consent. The solar will not be ground mounted and will not impact on the structural integrity of the buildings. The solar energy system will be consistent with the provisions of the SEPP.

4.2.4 State Environmental Planning Policy (Primary Production and Rural Development) 2019

The aim of this policy is to encourage sustainable agriculture and reduce land use conflict and sterilisation of rural land by balancing primary production, residential development and the protection of native vegetation, biodiversity and water resources. The lot is 4.35Ha in area and does not adjoin working agricultural land. Rather, the area is characterised by large lot rural residential properties. The development has been sited to not rely on native vegetation removal and maintain suitable distances from surrounding rural homes. Allowing the proposed development to occur on the subject site will not conflict with the aims of the policy.

4.2.5 State Environmental Planning Policy (Koala Protection Habitat) 2019

This SEPP aims to encourage the conservation and management of areas of natural vegetation that provide habitat for koalas to support a permanent free-living population over their present range and reverse the current trend of koala population decline. The subject site is identified as having areas mapped for site investigation for Koala Plans of Management. These areas identified are located within the southern and western portions of the site. Whilst the access driveway passes between the two mapped areas, the development will not impact upon the vegetation. A site investigation and creation of a Koala Management Plan is deemed to be unwarranted for this development as there will be no removal of Koala habitat or feed trees and the inclusion of a dwelling and outbuilding is not considered to impact on the free movement of any Koalas in the area.

4.3 Tweed Local Environmental Plan 2014

The land is identified within the Land Application Map of the *Tweed Local Environmental Plan 2014* (Tweed LEP 2014). As such, the provisions of this LEP apply to the site. The following provisions provide an assessment of the clauses of key relevance to the proposal.

4.3.1 Clause 1.2 Aims of the Plan

The proposal is considered to make a positive contribution towards the aims of the Tweed LEP 2014, specifically:

- to give effect to the desired outcomes, strategic principles, policies and actions contained in the Council's adopted strategic planning documents
- to encourage a sustainable local economy and affordable housing opportunities appropriate to Tweed
- to promote the responsible sustainable management and conservation of Tweed's natural and environmentally sensitive areas and waterways, visual amenity and scenic routes, built environment, and cultural heritage
- to promote building design which considers energy efficiency

4.3.2 Clause 1.4 Definitions

The proposal includes 2x land uses which are defined as a Dwelling house and Home Occupation. The relevant land use definitions are provided below:

Dwelling means a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile.

Dwelling house means a building containing only one Dwelling.

Note.

(Dwelling houses are a type of residential accommodation)

Home Occupation means an occupation that is carried on in a dwelling, or in a building ancillary to a dwelling, by one or more permanent residents of the dwelling and that does not involve—

- (a) the employment of persons other than those residents, or
- (b) interference with the amenity of the neighbourhood by reason of the emission of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, traffic generation or otherwise, or
- (c) the display of goods, whether in a window or otherwise, or
- (d) the exhibition of any signage (other than a business identification sign), or
- (e) the sale of items (whether goods or materials), or the exposure or offer for sale of items, by retail,

but does not include bed and breakfast accommodation, home occupation (sex services) or sex services premises.

Residential accommodation means a building or place used predominantly as a place of residence, and includes any of the following—

- (a) attached dwellings,
- (b) boarding houses,
- (c) dual occupancies,
- (d) dwelling houses,**
- (e) group homes,
- (f) hostels,
- (g) multi dwelling housing,
- (h) residential flat buildings,
- (i) rural workers' dwellings,
- (j) secondary dwellings,
- (k) semi-detached dwellings,
- (l) seniors housing,
- (m) shop top housing,

but does not include tourist and visitor accommodation or caravan parks.

4.3.3 Clause 2.3 Zone objectives and Land Use Table

The site is zoned RU2 Rural Landscape. Dwelling houses are a land use that is permitted with consent within this zone. The Home occupation is permitted without consent in this zone. The Home occupation will be located in the home office and will adhere to the parameters set out in the definition provided. It is also noted that the Home office is less than 40m².

The proposal maintains the rural landscape character of the land by limiting the impact to vegetation onsite and through the provision of quality architectural and landscape design which complements the rural setting.

4.3.4 Clause 4.2B Erection of dwelling houses and dual occupancies on land in certain rural and residential zones

The dwelling house will be erected on a lot created before this LEP came into effect and a dwelling house was permissible immediately prior to commencement of this Plan. The development therefore meets the requirements of Clause 4.2B(3)(c).

Whilst it has been asserted that a Dwelling entitlement does apply to the subject site, should Council not come to the same conclusions, attached to this Statement of Environmental Effects is a Clause 4.6 assessment which provides Council the opportunity to apply its discretion to remove the requirement to comply with Clause 4.2B requirements.

4.3.5 Clause 4.3 Height of Buildings

A maximum height of buildings of 9m applies to the subject site. The proposed buildings will not exceed the 9m height limit as the primary dwelling is to be 4.75m and the shed will be 3.85m high. The provisions of Clause 4.3 are satisfied.

4.3.6 Clause 4.6 Exceptions to Development Standards

The proposal is supported by a Clause 4.6 application for an exception to the development standard 4.2B. This application asserts that compliance with the development standard is unnecessary given the scale of the proposed development, the approval history for the subject site and the surrounding land uses and approvals. Further to this, the assessment contained within the SEE has set out sufficient environmental planning grounds to justify contravening the development standard.

4.3.7 Clause 5.10 Heritage Conservation

The site is not mapped within any Heritage conservation areas identified on Heritage Map Sheet HER_015 and does not include any heritage items listed in Schedule 5 of the Tweed LEP 2014.

Clause 5.10(5) requires consideration of the effect of the proposed development on the heritage significance of the place and any Aboriginal object known or reasonably likely to be located at the place by means of an adequate investigation and assessment (which may involve consideration of a heritage impact statement. As noted in section 2.2 of this SEE, the site is mapped as being within a Place of Aboriginal Heritage Significance and a report has been prepared by the Tweed Byron Local Aboriginal Land Council which assesses the site suitability for the development. A site visit has been completed with no evidence of heritage artefacts being sighted. Given the scope of the works involved, it is considered that there will be low risk of adverse impacts on this Aboriginal Place of heritage significance. The report concludes that no further Heritage Impact Assessment is required.

4.3.8 Clause 5.16 Subdivision of, or dwellings on, land in certain rural, residential or environment protection zones

The relevant heads of consideration under this clause are addressed in order below:

- a) *the existing uses and approved uses of land in the vicinity of the development,*

As discussed earlier in the SEE and as per the creation tree providing the history of approvals (Annexure A), the land in the vicinity of the development is primarily residential development with all other lots in Rock Road containing a dwelling house.

- b) *whether or not the development is likely to have a significant impact on land uses that, in the opinion of the consent authority, are likely to be preferred and the predominant land uses in the vicinity of the development,*

The purpose of the original subdivision was for the predominant use of the site to be rural residential development as the site was not considered to be suitable for agricultural development. The development is therefore not likely to have a significant impact on any other land uses in the vicinity of the development nor is there considered to be a preferred land use that can be accommodated on the site given the constraints of the land.

- c) *whether or not the development is likely to be incompatible with a use referred to in paragraph (a) or (b),*

The development is for a Dwelling house and outbuilding and is located and designed in a manner that avoids impacts to vegetation and the adjoining residences. Its design is considered to be compatible with the surrounding character.

- d) *any measures proposed by the applicant to avoid or minimise any incompatibility referred to in paragraph (c).*

There is no incompatibility between the proposed land and the surrounding existing and approved land uses.

Overall it is considered that there is no land use conflict between the existing and the proposed land use on the site or in the vicinity.

4.3.9 Clause 7.1 Acid Sulfate Soils

The site is mapped within a Class 5 Acid Sulfate Soils area.

The proposed driveway access has been located so as to follow the contour of the land, however, in certain points, it will result in minor cuts of up to 1.2m deep and fill of up to 1.1m in height. In terms of the dwelling house and shed, works below 1m of the natural ground surface would be limited to the new pool (maximum depth of 1.8m is proposed for the pool). Excavation is therefore likely to be well above the 5m trigger, specified for Class 5 Acid Sulfate Soils.

Considering the known presence of Acid Sulfate Soils in the wider Tweed locality, it would be reasonable that due regard is made during works onsite and that appropriate Acid Sulfate Soils handling be undertaken if contaminated soils were to be encountered.

Council has a template for Minor works within land mapped as potentially containing Acid Sulfate Soils, which has been completed as part of this application process.

4.3.10 Clause 7.2 Earthworks

The proposed development will involve minor earthworks to accommodate the building platform for the dwelling and shed and to ensure the levels for the driveway are compliant. Batters do not exceed 1 in 4 grade and aside from the swimming pool, excavations around the buildings are all under 1m in height.

As noted earlier, the maximum depth of cut for the driveway is 1.2m and the maximum fill will be 1.1m.

The site is not in an area subject to slope instability. The application is supported by a Site visit and cultural heritage advice report provided by the Tweed Byron Local Aboriginal Land Council. This report confirms that the likelihood for the land to contain items of cultural significance or contamination is low. It has been recommended that a cautious approach be taken when ground disturbing works are undertaken.

A site contamination report has been included to support the development application. This report confirms that the level of contaminants onsite do not impose a risk to human health and therefore excavation works can be conducted safely.

A Sediment and Erosion Control Plan can be provided as part of the construction certificate requirements to ensure the earthworks do not have potential detrimental impact on the environmental functions and processes surrounding the site.

The ancillary earthworks to the proposed development are compliant with Clause 7.2.

4.3.11 Clause 7.6 – Stormwater Management

It is intended that rainwater will be gathered from the roof of the new buildings and directed to two rainwater tanks. The site maintains over 98% landscaped area and thus the level of impervious area being introduced is not considered to create adverse stormwater impacts to adjoining properties. Any excess stormwater not captured in the rainwater tanks is capable of being drained into the landscaped areas within the subject site.

4.3.12 Clause 7.8 – Airspace Operations

The site is not located within the ANEF 2047 zones or mapped within the Obstacle Limitations Surface (Contours), however it does sit within the Obstacle Limitations Surface zone. In this regard, the buildings are single storey and the roof materials will incorporate non-reflective materials. The development is a single residential dwelling and will not penetrate the Operations or Limitations Surface. Compliance with clause 7.8 is met.

4.3.13 Clause 7.10 – Essential Services

The dwelling is designed to be as energy efficient and self-sufficient as possible. For electricity generation, the dwelling will utilise off-grid solar power. For sewer, an onsite sewer system has been designed for the site. In terms of water supply, the dwelling will have water bore pump system and rainwater collection installed to service the buildings. Vehicular access will be from the existing access point. The vehicle cross-over will be built to Council's standards.

4.4 Proposed Environmental Planning Instruments

Section 4.15 of the Act requires that any proposed instrument that is or has been the subject of public consultation under the Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved) is taken into consideration. The following draft EPIs have been identified as having or potentially having relevance to the proposed development.

4.4.1 Proposed State Environmental Planning Policy - SEPP (Environment)

The proposed State Environmental Planning Policy - SEPP (Environment) will repeal and replace the following EPIs:

- *State Environmental Planning Policy No. 19—Bushland in Urban Areas*
- *State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011*
- *State Environmental Planning Policy No. 50—Canal Estate Development*
- *Greater Metropolitan Regional Environmental Plan No. 2—Georges River Catchment*
- *Sydney Regional Environmental Plan No. 20—Hawkesbury-Nepean River (No.2-1997)*
- *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*
- *Willandra Lakes Regional Environmental Plan No. 1—World Heritage Property.*

The proposed development is not relevant to the existing EPIs listed above and is not located in an area of critical or potential habitat according to the draft mapping. Therefore, the proposed development is compliant with the draft provisions of the proposed Environment SEPP.

4.4.2 Proposed State Environmental Planning Policy - SEPP (Housing Diversity)

The proposed State Environmental Planning Policy – SEPP (Housing Diversity) will repeal and replace the following EPIs:

- *State Environmental Planning Policy (Affordable Rental Housing) 2009*
- *State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004*
- *State Environmental Planning Policy No 70 – Affordable Housing (Revised Schemes).*

The proposed SEPP consolidates existing State level housing-related planning provisions into a single instrument and aims to facilitate the delivery of diverse housing that meets the needs of the State's growing population and will support the development of a build-to-rent sector.

The proposal to develop the site with a new dwelling house would not conflict with the intent of the SEPP.

4.4.3 Proposed State Environmental Planning Policy - SEPP (Short term rental housing)

On 5 October 2018, the Department of Planning, Industry and Environment exhibited an Explanation of Intended Effect which outlined proposed amendments to planning rules to introduce the STRA planning framework. The proposed development is not considered to be relevant to the proposal as the dwelling house is intended to be used by the landowner and not rented out to provide accommodation on a commercial basis.

4.4.4 Planning Proposals

A review of current planning proposals relevant to the *TLEP 2014* has found that none of the Planning Proposals are applicable to the current proposal.

4.5 Tweed Development Control Plan 2014

4.5.1 Section A1 – Residential and Tourist Development Code

The proposal has been assessed against the provisions of the TDCP 2008 Section A1 Part A. Specifically, the proposal has been designed to comply with the dwelling controls. Please refer to the attached **DCP Assessment Table** for a detailed assessment against the controls.

Minor variations / alternative solutions to the controls have been proposed in relation to:

- Residential and Tourist Development Code, Section A1, Part A:
 - o 2.1, Topography, cut and fill – C2

These alternative solutions are discussed below.

Residential and Tourist Development Code – Part A Dwellings Houses, Dual Occupancy, Secondary Dwellings, Alterations And Additions and Ancillary Development	
Requirement	Compliance
2.1 Topography, Cut and Fill	
<p>C2. -Outside of the building footprint cut and fill to 1.0m for up to 10% of the site or a maximum of 100sqm is permissible to achieve flatter backyards, outdoor living areas, BBQ areas, clothes drying areas and the like. On steeply sloping sites (12 degrees and over) consideration may be given to greater cut and fill thresholds subject to:</p> <ol style="list-style-type: none"> i. Justification and satisfaction of the proposal against planning and design principles and objectives of this section; ii. Justification of the proposal and design intent through a site analysis including consideration of the likely streetscape impacts and compatibility with existing streetscape character; iii. Demonstration of a structural system of the house appropriate to the site and slope; iv. Justification and documentation of full site sections showing all existing and proposed levels and proposed retaining walls and batters; v. Consideration of the likely amenity impacts including overlooking, overshadowing, drainage and structural issues; vi. Limiting multiple retaining walls to 1.0m encouraging terracing rather than one large wall; vii. Landscaping to mitigate visual impacts of retaining walls and batters; viii. Suitable stormwater and drainage management. 	<p>Variation sought – Cut and fill outside the building footprint is required for the access driveway to be created.</p> <p>Cut will be a maximum of 1.2m and the fill be a maximum of 1.1m. In this case, the slope of the land has a maximum grade of 21% where the driveway access is proposed. Whilst the driveway is intended to follow the natural contour of the land and will only require minor earthworks the driveway will be less than the maximum 1 in 4 grade specified within clause 5.2.2 of the Council's Driveway Access to Property - Design Specification policy.</p> <p>The driveway location has been selected to ensure minimal earthworks with a shorter driveway to achieve access to the dwelling house via the most direct route. Any retaining works associated with the driveway will be well setback from adjoining properties and impacts will remain internal to the site as a result. The slight exceedance in the 1m height requirement will not have a significant impact on the rural streetscape character. Final driveway design will be provided at construction stage however, RL levels and batter grades have been provided on the submitted drawings.</p> <p>There are no significant amenity impacts associated with the earthworks with overlooking and overshadowing avoided as a result of the large lot sizes and relative setbacks.</p> <p>Stormwater and drainage management will be finalised with engineering drawings at the construction stage.</p>

	The objectives of the control are achieved as the cut and fill proposed are appropriate considering the slope of the land.
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As discussed under the assessment tables, the proposed dwelling is well designed and considers the topography and constraints of the land whilst reflecting the scenic amenity values and built character of Balfours Hills, Rock Road and Bungalora. The proposed development outcomes ensure a safe, accessible and attractive urban outcome at the site that is consistent with the surrounding development pattern and affords suitable amenity over adjoining land.

The proposal in this regard achieves the intent and objectives of the controls listed under Council's guiding DCP.

4.5.2 Section A2 – Site Access and Parking Code

The development is provided with 2x garage car parking spaces. The car parking provision onsite is able to meet the needs of residents to the site with suitable space onsite to accommodate vehicle manoeuvring to allow vehicles to exit the site in a forward manner.

Given the rural nature of the site, separate pedestrian access is not deemed necessary, however, it is noted that the driveway slopes uphill which would encourage slower speeds for vehicles to assist with pedestrian safety should the residents be walking up the driveway.

4.5.3 Section A6 Biting Midge and Mosquito Controls

The proposed development will incorporate relevant design measures (insect screens as appropriate) to ensure that the midge and mosquitos do not pose a risk to resident's onsite. Stormwater runoff will be retained in water tanks to limit the provision of wet environments that can promote the growth of midge populations. The development has considered the relevant controls within section A6 and can achieve the objectives sought.

4.5.4 Section A9. Energy Smart Homes Policy

The proposed dwellings comply with this section of the Tweed DCP 2008 and have been designed to be water and energy efficient. Please refer to the **BASIX Certificates** attached to this development application.

4.5.5 Section A15 Waste Minimisation and Management

A brief description of the management of construction waste and ongoing operational waste for the development is below:

Construction

Construction materials will be stockpiled immediate to their relevant built footprint enabling efficient construction, suitable space for source separation and appropriate setbacks from drainage areas (i.e. gutters). Site waste receptacles, such as skip bins, will be used as required and also located close to construction areas.

Operation

The proposed dwelling incorporates sufficient indoor space through kitchen cupboards, pantry and bins to collect a minimum of 1x day's waste before being transferred to Council's formal green waste, recycling and waste bins. The bin storage areas are located within immediate proximity to the dwelling house and adequate washing area provided. Bins will be managed in accordance with Tweed Council's requirements and will be transported to an appropriate collection point.

The broad provisions detailed above encourage source separation of waste, reuse, and recycling by ensuring appropriate storage and collection facilities for waste, and quality design of waste facilities and are considered to satisfy the waste management provisions of the Tweed DCP.

4.5.6 Section A16. Preservation of Trees or Vegetation

Vegetation to be removed is limited to 2x Camphor Laurel trees. These are not native species nor are they considered to have biodiversity values. In the context of the site, there are larger gatherings of trees that should be afforded protection and the loss of these two trees will present minimal impact to the scenic amenity of the area. The inclusion of garden beds throughout the site will soften the visual impact of the proposed buildings.

The relevant vegetation removal considerations for the subject site are addressed below:

- No restrictive covenant or other legal impediment exists that requires the tree or vegetation to be retained;
- No tree or vegetation is of upmost significant amenity, aesthetic or scenic value. The vegetation planned for the site would ensure the loss of vegetation onsite is appropriately replaced, contributing to the area's landscape character;
- No tree or vegetation is of significant cultural or historical value;
- No tree or vegetation has significant ecological value or provides significant wildlife habitat;
- There is no prescribed vegetation that consists of koala feed trees listed under Section 1.3(d)
- There are no mangroves or other marine vegetation being removed.
- Onsite vegetation is not protected under the Coastal Management SEPP,
- No trees or vegetation are listed on Council's Significant Vegetation Register (Schedule 2);
- The removal of the tree or vegetation is unlikely to cause significant erosion or sedimentation; and will provide a better outcome for the driveway.
- The trees are not locally significant.

4.6 Planning Agreement

No Planning Agreements are applicable to the site.

4.7 Environmental Planning and Assessment Regulation 2000

Clause 92 of the Regulations prescribes further matters that need to be considered by the consent authority.

(1) For the purposes of section 4.15 (1) (a) (iv) of the Act, the following matters are prescribed as matters to be taken into consideration by a consent authority in determining a development application:

- (a) (Repealed)
- (b) in the case of a development application for the demolition of a building, the provisions of AS 2601,
- (c) in the case of a development application for the carrying out of development on land that is subject to a subdivision order made under Schedule 7 to the Act, the provisions of that order and of any development plan prepared for the land by a relevant authority under that Schedule,
- (d) in the case of the following development, the Dark Sky Planning Guideline:
 - (i) any development on land within the local government area of Coonamble, City of Dubbo, Gilgandra or Warrumbungle Shire,
 - (ii) development of a class or description included in Schedule 4A to the Act, State significant development or designated development on land less than 200 kilometres from the Siding Spring Observatory,
- (e) in the case of a development application for development for the purposes of a manor house or multi dwelling housing (terraces), the Medium Density Design Guide for Development Applications published by the Department of Planning and Environment on 6 July 2018, but only if the consent authority is satisfied that there is not a development control plan that adequately addresses such development.

Note. A copy of the Guide is available on the website of the Department.

(2) In this clause:

AS 2601 means the document entitled Australian Standard AS 2601—1991: The Demolition of Structures, published by Standards Australia, and as in force at 1 July 1993.

For the purposes of Section 4.15(1)(a)(iv) of the Act, the following matters are prescribed as matters to be taken into consideration by a consent authority in determining a development application:

4.7.1 AS 2601-2001 The demolition of structures

There are no existing structures that require demolition onsite.

4.7.2 Subdivision Order & Plan of Development

No subdivision order made under Schedule 7 of the Act or development plan are applicable to the subject site or proposed development.

4.7.3 Dark Sky Planning Guideline

The proposed development is not located in on land within the local government area of Coonamble, City of Dubbo, Gilgandra or Warrumbungle Shire or on land located less than 200 kilometres from the Siding Spring Observatory.

4.7.4 Medium Density Design Guide for Development Applications

The proposed development is not for the purposes of manor house or multi dwelling housing (terraces) or rely upon the Medium Density Housing Code.

4.8 The Likely Impacts

The proposal is perceived to enhance the existing site and provide economic, social and environmental benefits including;

- Developing the site in a manner that is sympathetic to the surrounding environment and site characteristics through the provision of a Dwelling on a rural residential lot that retains the landscape values of the area and avoids adverse impacts associated with the environmental constraints and topography of the land.
- Developing the final lot in the street and completing the original intent of the subdivision approval issued by Council in the 1990's.
- Providing a development product that is consistent with the density and built form outcomes throughout the local area.

- Providing safe and convenient access and movability to and from the site that will not result in an unaccepted impact upon the locality.
- Promoting housing and lifestyle choice whilst creating short term job opportunities (construction).

It is acknowledged that the proposal does seek a variation to local design controls; however, the intent of these controls is being achieved through the proposed design outcomes. That is, there is sufficient environmental planning grounds to support a variation to these controls.

4.9 The Suitability of the Site for the Development

The subject site is located within an urban area, has access to all essential services and is free of significant environmental constraints.

This site is suitable for the proposed development considering:

- A dwelling house is a permissible land use in the zone.
- A dwelling entitlement appears to apply to the land, and equally, a dwelling on the land appears to be the logical use of the site
- The proposal will result in a contemporary development outcome that is consistent with the built form character and housing trends in the area.
- The proposed land uses do not raise any servicing, stormwater or traffic issues within the area and is primarily self-sufficient and environmentally sustainable.

The scale of the proposal responds to its location within the Bungalora locality and maintains the scenic and landscape values afforded to the area. Accordingly, the site is considered suitable for the development as proposed.

Key matters which have not been discussed previously in detail under this planning report, include bushfire threat and cultural heritage.

In terms of bushfire, the attached Bushfire Assessment report has considered the risk associated with the perceived bushfire threat and the location, design and characteristics of the proposed development. It has been concluded that the proposed works are capable of complying with the acceptable solutions of Planning for Bushfire Protection 2019 subject to recommendations relating to site access and water supply being implemented. Incorporating the proposed recommendations will ensure that the development has adequately considered and addressed potential bushfire threat.

In terms of cultural heritage, the heritage report prepared by Tweed Byron Local Aboriginal Land Council indicates that whilst there is the presence of items and features of aboriginal cultural significance in the area, the scale of the works and the location of the site lead to the conclusion that there is a low risk of harm to Aboriginal cultural heritage. The report notes that a full archaeological assessment is not deemed to be required. During the construction phase, due care will be taken to comply with the relevant legislation relating to cultural heritage.

4.10 Submissions made

As detailed previously, the proposed development will likely require notification pursuant to Council's Community Engagement and Participation Plan 2019–2024.

Council will consider any public or Agency submissions received during the assessment of the application. In addition, the applicant formally requests an opportunity to review and address any submissions received.

4.11 The Public Interest

The proposal upholds the aims, objectives and intent of the applicable planning framework. There is no known public interest in the development site, however, the public notification of the development will afford the public an opportunity to provide commentary on the development and the land owner can address any submissions by providing a response if deemed necessary.

For the reasons outlined, the proposal is considered to be in accordance with the public interest and warrants approval, subject to the application of reasonable and relevant conditions.

5. Other Considerations

Further considerations believed to be of relevance to the proposed development are discussed below:

5.1 Biodiversity Conservation Act 2016

The *Biodiversity Conservation Act 2016*, together with the *Biodiversity Conservation Regulation 2017*, outlines the framework for addressing impacts on biodiversity from development and clearing. It establishes a framework to avoid, minimise and offset impacts on biodiversity from development through the Biodiversity Offsets Scheme. As discussed in section 2.3 of this SEE, no mapped areas containing vegetation with biodiversity values will be impacted by the development.

5.2 North Coast Regional Plan 2036

The NSW Government's vision for the North Coast is to create the best region in Australia to live, work and play thanks to its spectacular environment and vibrant communities. This is embodied in the goals and directions of the North Coast Regional Plan 2036.

The proposed development is consistent with the Regional Plan and specifically helps achieve the following goals:

- Goal 3: Vibrant and engaged communities
 - Direction 14: Provide great places to live and work
 - Direction 18: Respect and protect the North Coast's Aboriginal Heritage
 - Direction 20: Maintain the region's distinctive built character
- Goal 4: Great housing choice and lifestyle options
 - Direction 22: Deliver greater housing supply
 - Direction 24: Deliver well-planned rural residential housing

5.3 Urban Design Guide for Regional NSW

The guidelines intend to improve the design of development in regional NSW through better placed development that is designed for the region it is proposed in. The guidelines reference the subtropical climate of the Far North Region and the need for diverse housing types and addressing the prevailing qualities of place which a location its distinct identity.

The proposed development is consistent with the guidelines by harnessing the site's favourable climatic conditions and further complimenting housing diversity within an existing urban environment.

5.4 Tweed Local Strategic Planning Statement

The 2040 vision is that the Tweed's vibrant urban, coastal and rural communities are recognised for adapting to the challenges of climate change and population growth in a way that protects and enhances the Shire's internationally significant natural environment, highly desirable lifestyle, and thriving local economy.

While not necessary a development application assessment measure, the proposed development is consistent with vision for Tweed under the LSPS and specifically aligns with the Strategy's intended outcomes alluded to through key planning priorities. This includes:

- Planning priority 2- Promote, protect, conserve and enhance the Tweed's high scenic quality, biological and ecological values for future generations and ecosystem health
- Planning priority 13 - Promote the respect, protection and management of Aboriginal cultural heritage and historic heritage.
- Planning Priority 17- Deliver well-planned residential and rural residential housing.

- o Planning priority 18: Promote innovation and best practices for climate responsive and ecologically sustainable building design and construction.

5.5 Tweed Draft Strategic Landscape Policy

The development has been considered for its impact on the scenic amenity values of the shire and it is acknowledged that the dwelling's location on top of the ridgeline for Balfour hill has panoramic views. The policy identified the site as having Rural Hills and Valleys landscape characteristics. Management of vegetation is a defining attribute of these characteristics. Rural hills and valleys are suitable for low density development with vegetation screening of fences, sheds and farmhouses provided for the protection of long distance views. The vegetation onsite is remaining largely untouched and the landscape values are therefore maintained. Overall, the scale of the development and the single storey height is appropriate for the site and will not have a significant impact on the scenic views due to the separation distance to all the applicable viewsheds. The development is consistent with the management principles of the draft policy.

5.6 Tweed Rural Land Strategy 2020-2036

The development is consistent with Policy direction 1 of the Rural Land Strategy in that it avoids impacts on agricultural land. The subject site is mapped as having parts of it suitable for grazing but not cultivation. A portion of this grazing area is covered with mature vegetation and so is not considered to be an optimal land use for the site. The visual impacts of a dwelling house would not be dissimilar to farm sheds and grazing activities occurring on the land. Environmental impacts associated with grazing animals may have a larger impact on the topography and vegetation onsite.

Policy direction 2 relates to the protection of environmental values and responses to natural hazards. The development has avoided impacts to areas of high biodiversity value and appropriately responded to the Bushfire risk associated with the site.

Policy direction 5 allows for greater diversity of rural housing and key actions involve the thorough investigation of dwelling entitlements. This SEE and associated variation application has provided an assessment which establishes grounds for a dwelling entitlement and merit for the proposed development. The development has indicated have minimal impacts on services and infrastructure, will not adversely impact scenic amenity or landscape character, will not create land-use conflict, and – will not reduce the area of productive or potentially productive agricultural land.

With regards to policy direction 8, the dwelling has been designed to be energy self-sufficient and has obtained energy efficiency certificates which confirm its design (use of off-grid solar, onsite sewer and water) contributes positively towards promoting more sustainable land use practices.

Overall, the development is generally consistent with the policy directions of the Tweed Rural Land Strategy.

6. Conclusion

Planit Consulting Pty Ltd has prepared a Statement of Environmental Effects for a proposal at 51 Rock Road Bungalora involving a new dwelling house, with shed, swimming pool and a home office. The application seeks consent for all associated landscape works, vegetation removal, infrastructure and service utility connections, access driveway and occupation of the dwelling.

The application has been prepared in accordance with the provisions of the *Environmental Planning and Assessment Act 1979* and the relevant requirements of the *Tweed Local Environmental Plan 2014*, Development Control Plan and associated policies. An assessment of the proposed development against the instruments reveals the proposed development complies with the planning intent and character sought for the locality.

Planit's detailed assessment of the proposal has confirmed that the proposed development warrants support by the consent authority and Development Consent issued, including reasonable and relevant conditions in accordance with Part 4 of the Act. We do seek to review draft conditions prior to the finalisation of any determination.

If you have any questions in relation to the information presented within this report, please contact Planit Consulting on (02) 6674 5001.

Application to Vary a Standard Under Clause 4.6

1. Introduction

This application is made in respect to a proposed Dwelling house at 51 Rock Road, Bungalora (Lot 2 DP 880732). This report is to be read in-conjunction with the accompanying Development Application and Statement of Environmental Effects.

Clause 4.2B of the *Tweed Local Environmental Plan (LEP) 2014* states the objectives of the clause are as follows:

- 4.2B Erection of dwelling houses and dual occupancies on land in certain rural and residential zones
- a) to minimise unplanned rural residential development.
 - b) to enable the replacement of lawfully erected dwelling houses and dual occupancies in rural and residential zones.

Clause 4.2B applies to land within Zone RU2 Rural Landscape which applies to the subject lot.

(3) Development consent must not be granted for the erection of a dwelling house or a dual occupancy on land to which this clause applies unless the land—

- a) is a lot that is at least the minimum lot size shown on the Lot Size Map in relation to that land, or
- b) is a lot created under this Plan (other than under clause 4.2(3)), or
- c) is a lot created before this Plan commenced and on which the erection of a dwelling house or a dual occupancy was permissible immediately before that commencement, or
- d) 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 a dual occupancy would have been permissible if the plan of subdivision had been registered before that commencement, or
- e) would have been a lot referred to in paragraph (a), (b), (c) or (d) had it not been affected by—
 - (i) a minor realignment of its boundaries that did not create an additional lot, or
 - (ii) a subdivision creating or widening a public road or public reserve or for another public purpose, or
 - (iii) a consolidation with an adjoining public road or public reserve or for another public purpose.

Note—

A dwelling cannot be erected on a lot created under clause 4.2.

(4) Development consent must not be granted under subclause (3) unless—

- a) no dwelling house or dual occupancy has been erected on the land, and
- b) if a development application has been made for development for the purpose of a dwelling house or a dual occupancy on the land—the application has been refused or it was withdrawn before it was determined, and
- c) if development consent has been granted in relation to such an application—the consent has been surrendered or it has lapsed.

The subject site is zoned RU2 Rural landscape and is 4.135Ha in area. The subject lot was not created as a result of clause 4.2 of the Tweed LEP 2014 and whilst an assessment in the associated development application has asserted a dwelling entitlement exists, Council's own assessment may conclude an alternative outcome based on Clause 4.2B.

Should Council's assessment conclude there is non-compliance with Clause 4.2B, this application discusses the environmental planning grounds for contravening the standard under this LEP provision and in turn, demonstrates that compliance is unnecessary in the circumstances of the case.

2. Consideration Under Clause 4.6

Clause 4.6 of the Tweed LEP 2014 provides a mechanism to vary development standards under the local planning instrument.

Tweed Local Environmental Plan 2014 Clause 4.6

Requirement	Comment
4.6 Exceptions to development standards	
(1) The objectives of this clause are as follows: (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.	The proposal seeks flexibility in the application of Clause 4.2B, offered through Clause 4.6, to achieve a better outcome for and from the development. This is discussed in detail below.
(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.	Noted. Clause 4.2B and its subclauses are not excluded from the operation of Clause 4.6.
(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:	This application forms this written request to vary the standard under Clause 4.2B (3) (c). Specific reference to the particular subclause has been provided above.
(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and	The subject site has previously had the benefit of a Dwelling entitlement since the early 1990s and it is considered that it would be unwarranted to conclude that the previous subdivision approvals removed the dwelling entitlement.

Tweed Local Environmental Plan 2014 Clause 4.6

Requirement	Comment
	<p>In addition to this:</p> <ul style="list-style-type: none"> • the zoning of the land accommodates the land use as permitted with consent. • the development is consistent with the objectives of the zone • dwellings / rural residential living is the predominant land use in the area • there is no opportunity for land use conflict with wider agricultural practices • the design of the dwelling has considered the various site constraints and the development standards which apply to the land. • the proposal is in keeping with the intended character of the area. <p>It is further considered unnecessary to refuse the last lot in the subdivision the right to have a dwelling house on the land, especially given the previous subdivision conditions required the lot to be connected with services which can accommodate a dwelling.</p> <p>It is unnecessary for compliance with the standard to be met as the development is able to be implemented with minimal impact to the adjoining properties or the surrounding environment. Furthermore, the Tweed Rural land strategy 2020-2036 adopted by Council in May 2020 notes as follows at page 36:</p> <p><i>“Properties typically less than 10 hectares in existing clusters be considered for further subdivision to increase housing density where it does not expanding the footprint of the cluster, impacting agricultural land, environmental values or scenic amenity of the locality or contain Farmland rated properties.”</i></p> <p>In this case, the property is less than ten hectares in size, and whilst subdivision is not proposed, the increase in housing density by one dwelling will not significantly impact on agricultural land, environmental values or scenic amenity. Nor will the proposal relate to Farmland rated properties.</p>
<p>- the objectives of the development standard are achieved notwithstanding non-compliance with the standard</p>	<p>The key objective of Clause 4.2(B), is: <i>“(1)(a) to minimise unplanned rural residential development”</i></p>

Tweed Local Environmental Plan 2014 Clause 4.6

Requirement	Comment
	<p>This rural residential development was planned as part of the original subdivision in the 1993 approval with the intended dwelling entitlement locations shown on the approved plans. The LEP zoning anticipates dwelling houses as a land use and assessment has determined that the site is suitable for the proposed dwelling house. The development cannot be considered to be unplanned as Council approvals, zoning and rating category all indicate that the site is planned for rural residential development.</p> <p>The second objective of this clause is: <i>“(b) to enable the replacement of lawfully erected dwelling houses and dual occupancies in rural and residential zones.”</i></p> <p>The development does not involve the replacement of a lawfully erected dwelling house as the site is vacant.</p> <p>On this basis, the objectives of the standards are achieved despite the non-compliance with 4.2(B)(3)(c).</p>
<ul style="list-style-type: none"> - the underlying objective or purpose of the standard is not relevant to the development 	<p>The underlying objective of the standard is not relevant to the development in so much as the development is considered to have been planned at the original subdivision in 1993 and through the subsequent change to the ratings category for the land. The original approved plans showed future proposed Dwelling house locations on the subject lot in the same location as the proposed Dwelling. Therefore the term “unplanned” is not considered to apply to the development.</p> <p>Concurrence previously provided by the Department of Planning in March 1993 also confirmed that any application for the erection of dwellings on the subject lot would be subject to a new development application. This advice does not indicate any objection to the ability for the landowner to submit a Development Application for a Dwelling house.</p> <p>Further to this, the term minimise is considered relevant as this does not negate the ability for Council to consider this Dwelling house on its merits. The associated SEE has assessed the development on its merits and it is considered to be consistent with Council’s LEP, DCP and Rural Land Strategy.</p>

Tweed Local Environmental Plan 2014 Clause 4.6

Requirement	Comment
<ul style="list-style-type: none"> - the underlying objective or purpose would be defeated or thwarted if compliance was required 	<p>That said, the proposal does not result in a density at the site that is inconsistent with the existing and future preferred built form character, nor will it strain infrastructure services in the area. These environmental planning considerations are discussed in more detail below.</p>
<ul style="list-style-type: none"> - the standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and/or 	<p>The Council has approved a Dwelling house on the adjoining allotment 17 Rock Road since the referenced boundary adjustment approval (K98/0084). The assertion that the previous subdivision approvals removed the right for a Dwelling entitlement on the subject site appears contrary to the approval of K98/0447 and subsequent advice issued for this land (Refer to SEE).</p>
<ul style="list-style-type: none"> - the zoning of land was unreasonable or inappropriate, such that the standards for that zoning are also unreasonable or unnecessary. 	<p>The RU2 Rural Landscape zoning does reflect the site and future desired character for the area.</p> <p>The standard being varied is a principal development standard which relates to this particular zone, however, it is considered that requiring compliance with this standard would be at odds with the zoning and on this basis compliance is considered to be inappropriate.</p>
<p>(b) that there are sufficient environmental planning grounds to justify contravening the development standard.</p>	<p>There are sufficient environmental planning grounds to justify contravening the development standard when considering the following information.</p>
<ul style="list-style-type: none"> - identify the aspect or feature of the development that contravenes the relevant development standard, rather than discussing the development generally 	<p>The aspect of the development that contravenes the relevant development standard is that the lot was subject to a subdivision approval prior to the commencement of the current LEP and there was no request to vary standard 25(3) of the Tweed LEP 1987. Council has sought to deny a dwelling entitlement exists on this basis.</p>

Tweed Local Environmental Plan 2014 Clause 4.6

Requirement	Comment
<p>- justify why the contravention of the development standard is acceptable, rather than simply promoting the benefits of carrying out the development as a whole</p>	<p>For all of the matters discussed above, contravention of the standard is acceptable. This is summarised below:</p> <ul style="list-style-type: none"> • The contravention of the standard is acceptable as a Dwelling house could have been built on the land in the 1990s and there is no significant impact by the delay to develop the site in this manner. Nor does the delay result in a major conflict with more recent changes to Council's strategic policies and plans for the area. • The lot was planned for residential development as part of the original subdivision in 1993 and merely required a development application to be submitted for a merit-based assessment to consider any impacts to the surrounding properties and character of the area. When considering the proposal on its merits, it is considered that there are no reasonable grounds to refuse the proposal based on the objectives and intent of Clause 4.2B. The site does not have any significant constraints that prevent the development from producing a residential outcome that is consistent with Council's LEP, DCP and Rural Land Strategy. • The proposal does not result in unplanned development. • The proposal will result in a contemporary development outcome that is consistent with the built form character and trends in the area. • The site is not large enough to allow for significant agricultural land uses to be located here and use for a single dwelling would have less of an impact on scenic amenity values of the land.
<p>- explain on what basis there are sufficient environmental planning grounds to justify contravening the development standard. This explanation must be detailed enough so as to enable the consent authority to be satisfied that the written request has adequately addressed the matters outlined in cl 4.6(3).[5]</p>	<p>The environmental planning grounds for contravening the standard have been discussed above. Similarly, the unnecessary requirement to uphold the standard has also been discussed.</p> <p>At a wider strategic scale, the Tweed Rural Land Strategy anticipates exploration of increasing rural housing diversity and at a micro / site-specific scale, we consider that allowing 1x dwelling at the site is</p>

Tweed Local Environmental Plan 2014 Clause 4.6

Requirement	Comment
	<p>reasonable, demonstrating both strategic and statutory merit. It achieves:</p> <ul style="list-style-type: none"> - the intent of the Tweed LEP 2014 and the Tweed DCP 2008 through provision of a Dwelling house which considers energy efficiency, avoids amenity impacts to adjoining residences and has considered both Bushfire and topographical constraints as well as cultural significance of the land. - the objectives of the RU2 zone and the underlying purpose of the standard are being achieved, given that the proposal maintains the rural landscape character of the land.
<p>(4) Development consent must not be granted for development that contravenes a development standard unless:</p> <p>(a) the consent authority is satisfied that:</p> <p>(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and</p> <p>(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and</p> <p>(b) the concurrence of the Secretary has been obtained.</p>	<p>The matters required to be addressed under subclause (3) have been demonstrated above.</p> <p>The proposed dwelling house is considered to be in the public's interest considering it meets the objectives of the RU2 zone and the underlying purpose of the standard. That is, the proposed development contributes to housing supply with a compatible land use that complements the rural landscape character.</p> <p>In accordance with Planning Circular PS 18-003, Council has the assumed concurrence of the Secretary. The matter will need to be determined by the Council however, not a delegate.</p>
<p>(5) In deciding whether to grant concurrence, the Secretary must consider:</p> <p>(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and</p> <p>(b) the public benefit of maintaining the development standard, and</p> <p>(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.</p>	<p>While Council may assume the concurrence of the Secretary, the tests are being achieved considering:</p> <p>The proposal is site-specific and unique, and does not raise any matters of significance for State or regional environmental planning.</p> <p>There is a public benefit to the proposal as it contributes towards maintaining Regional and local dwelling yield and housing diversity targets. There is also a small contribution to the local construction industry in a time of economic downturn globally.</p> <p>There appears to be no public benefit for maintaining the standard in the case.</p>

Tweed Local Environmental Plan 2014 Clause 4.6

Requirement	Comment
	<ul style="list-style-type: none"> • A dwelling house is permissible in the zone and this dwelling has been designed to be consistent with the objectives of the zone. • All other allotments in the street have obtained approvals for Dwelling houses. • The proposal will result in a more contemporary development outcome that is consistent with the built form character and trends in the area without reducing the landscape character values of the land. • The proposed development achieves the primary built form standards under the LEP (FSR, height, etc.) despite not meeting the relevant standard. • The previous subdivision approval history was approved by Council with the intention of locating a dwelling in the proposed location. • Approval of the dwelling at the site does not raise any servicing, stormwater or traffic issues within the area.
	<p>There are no other matters required to be taken into consideration by the Secretary; consideration of the 'five-part test' under the NSW Planning Department's 'Varying development standards: A Guide, 2011' is not deemed to be required as the five part test essentially covers the same matters that have been assessed under Clause 4.6.</p>
<p>(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:</p>	N/A
<p>Note. When this Plan was made it did not include all of these zones.</p>	
<p>(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or</p>	N/A
<p>(b) the subdivision will result in at least one lot that is less than 90% of the</p>	N/A

Tweed Local Environmental Plan 2014 Clause 4.6

Requirement	Comment
minimum area specified for such a lot by a development standard.	
(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).	Council will keep a record of its assessment of the factors required to be addressed in the written request referred to above.
(8) This clause does not allow development consent to be granted for development that would contravene any of the following: (a) a development standard for complying development, (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated, (c) clause 5.4.	The variation does not relate to a complying development standard. The variation does not relate to a BASIX certificate. The variation does not relate to Clause 5.4 of the Tweed LEP 2014.

With regard to the above, it has been demonstrated that there are environmental planning grounds to justify the contravention of the standard and compliance with the standard would seem unnecessary in this case.

3. Conclusion

It has been demonstrated that there are environmental planning grounds to justify the contravention of the standard and compliance with the standard would seem unnecessary in this case.

Support for the proposed variation is requested based on the matters addressed in this application.