
TWEED SHIRE COUNCIL - MEETING TASK SHEET

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ACTION ITEM - Planning Committee Agenda 5 August 2021

TITLE: Request to prepare a planning proposal to provide a dwelling entitlement at No. 51 Rock Road, Bungalora (Lot 2 DP 880732)

STAFF RECOMMENDATION

That with respect to No. 51 Rock Road, Bungalora (Lot 2 DP 880732):

1. A planning proposal be prepared with the intent of securing a dwelling entitlement for the property;
2. That the planning proposal be sent to the Department of Planning, Industry and Environment for a Gateway determination;
3. Upon receipt of a Gateway determination to proceed, that any additional studies be completed prior to public exhibition, and
4. Following public exhibition, a further report be brought back to Council with a response to submissions received, and a recommendation.

MEETING RESOLUTION

Cr Pryce Allsop

Cr James Owen

RECOMMENDED that with respect to No. 51 Rock Road, Bungalora (Lot 2 DP 880732):

1. A planning proposal be prepared with the intent of securing a dwelling entitlement for the property;
2. That the planning proposal be sent to the Department of Planning, Industry and Environment for a Gateway determination;
3. Upon receipt of a Gateway determination to proceed, that any additional studies be completed prior to public exhibition, and
4. Following public exhibition, a further report be brought back to Council with a response to submissions received, and a recommendation.

The Motion was **Carried**

VOTE FOR - Cr Katie Milne, Cr Chris Cherry (Mayor), Cr Pryce Allsop, Cr Reece Byrnes (Deputy Mayor), Cr Ron Cooper, Cr James Owen, Cr Warren Polglase

VOTE AGAINST - None

ABSENT. DID NOT VOTE - Nil

TITLE: Request to prepare a planning proposal to provide a dwelling entitlement at No. 51 Rock Road, Bungalora (Lot 2 DP 880732)

Submitted By: Strategic Planning and Urban Design

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

Leaving a Legacy

Looking out for future generations

1.4.1 Strategic Land-use Planning - To plan for sustainable development which balances economic, environmental and social considerations. Promote good design in the built environment.

ROLE:

LEADER - Council grows strong, transparent and visionary leadership promoting unity to make our Tweed community even better tomorrow than it is today.

EXECUTIVE SUMMARY

Council is in receipt of a request to prepare a planning proposal for a property at No. 51 Rock Road, Bungalora (Lot 2 DP 880732).

The intent of the planning proposal is to secure a dwelling entitlement for the property.

The property is the result of a sequence of historical lawful subdivisions which created multiple lots on surrounding land that are less than the current minimum lot size (MLS); and owing to particularities with the environmental planning instruments that applied at the time, has resulted in this property having no dwelling entitlement.

In 2020, the Applicant lodged a development application (DA) for construction of a dwelling-house which was deemed to be a prohibited use because of this planning irregularity; however, it has allowed DA information to be provided with this request, which, following a preliminary assessment, has supported the suitability and merit of the proposal.

To implement this amendment, it is proposed to amend Tweed Local Environmental Plan 2014 (LEP 2014) by creating a Dwelling Opportunity Map (DOM) and associated clause as identified in the Rural Land Strategy (RLS) (Action 88), and for this property to be the first property registered on the Map.

Therefore, this 'private' request also provides an opportunity to initiate the first stage of this Shire-wide provision by implementing key aspects of the broader framework.

While creation of the DOM supports the proposed outcome of this planning proposal, it also fulfils in part an action in the RLS, and will ultimately apply to all rural land.

It is not the intention of this planning proposal to fully implement Action 88, as there are wider implications that must be sufficiently investigated and consulted; as such, only this property can be mapped at this time.

In effect, this planning proposal will facilitate two related outcomes:

- Assessment of a request to provide a dwelling entitlement to an individual property, and
- Establish key elements of the framework for full implementation of Action 88 in the RLS.

RECOMMENDATION:

That with respect to No. 51 Rock Road, Bungalora (Lot 2 DP 880732):

1. **A planning proposal be prepared with the intent of securing a dwelling entitlement for the property;**
2. **That the planning proposal be sent to the Department of Planning, Industry and Environment for a Gateway determination;**
3. **Upon receipt of a Gateway determination to proceed, that any additional studies be completed prior to public exhibition, and**
4. **Following public exhibition, a further report be brought back to Council with a response to submissions received, and a recommendation.**

ATTACHMENTS

1. Figures 1-6

COUNCIL IMPLICATIONS:

a. Legislation/Policy/Existing Strategic Plans

This planning proposal will result in the creation a Dwelling Opportunity Map which is an action in the Rural Land Strategy.

While this planning proposal relates specifically to the subject property, a further amendment will be proposed separate to this planning proposal which will cause the DOM and associated clause to apply to all rural land, and ultimately result in the end of dwelling opportunity searches which consume significant Council resources.

b. Sustainability:

i. Financial (Budget/Long Term Financial Plan/Whole of Life Cost):

Cost of preparation of this planning proposal will be covered by the proponent in accordance with Council's Schedule of Fees and Charges.

ii. Environmental:

The general location of the proposed dwelling is cleared of vegetation and maintained in a grassed state.

iii. Social:

Not Applicable.

c. Legal Considerations:

The property does not have a dwelling entitlement and as such, this planning proposal is seeking to provide such an entitlement.

d. Risk Considerations:

While a preliminary assessment has supported proceeding with the proposal based on strategic merit, no guarantee can be given at this time as to the ultimate outcome of further investigations, public and

agency consultation.

e. Engagement/Communication:

Not Applicable.

REPORT:

Council is in receipt of a request seeking an amendment to LEP 2014 which would result in allocation of a dwelling entitlement to Lot 2 DP 880732, No. 51 Rock Road, Bungalora.

This report:

- Provides a preliminary assessment of the site and request;
- Seeks Council endorsement to prepare a planning proposal, with the intent of providing a dwelling entitlement, which is to be:
 - sent to the DPIE for a Gateway determination;
 - publicly exhibited in accordance with the Gateway determination, and
 - further reported to Council following exhibition, with a recommendation.

The site

The property lies on the eastern side of Rock Road, has an elevated northerly aspect, and is partially cleared with steeper southern and western slopes vegetated (refer to Figures 1 and 2); property details include:

- Zoning: RU2 Rural Landscape.
- Minimum Lot Size 40 hectares.
- Property size 4.135 hectares.

History to the request

In late 2020 the applicant lodged a Development Application (DA) seeking approval for a dwelling house, but was advised by Council that the property did not possess a dwelling entitlement; as such, DA level information has been provided with this planning proposal request.

As shown in Figures 3 and 4, the property was created as the result of subdivision of a parent allotment that led to creation of 10 properties typically of a size less than the 40 hectare Minimum Lot Size (MLS) for the RU2 Rural Landscape zone.

Notwithstanding that landuse planning provisions at the time resulted in creation of an allotment without a dwelling entitlement, a pragmatic assessment of the request and the established nature of small lots adjoining the property would suggest that an opportunity to allocate a dwelling entitlement to this property should be further investigated.

Matter for consideration

A preliminary desktop assessment has identified the following matters as requiring consideration:

- Contamination;
- Access;

- Water and Wastewater management;
- Scenic impact;
- Bushfire setbacks, and
- Vegetation management.

During preparation of the Gateway Version of the Planning Proposal, additional matters may be raised which will require consideration prior to sending the proposal to the Department of Planning, Industry and Environment (DPIE) for a Gateway determination, which may also raise further matters to be considered prior to community consultation.

Documentation lodged with the request support proceeding with the preparation of a planning proposal; documentation includes:

- Aboriginal Cultural Heritage Site Visit and Advice Report;
- Architectural Plans;
- Biodiversity Offset Scheme (BOS) Entry Threshold Map;
- Bushfire Risk Assessment Report;
- Contamination report - Preliminary Site Investigation;
- Onsite Sewer Management Report, and
- Statement of Environmental Effects & Clause 4.6.

Implementation pathway

Council has previously supported a similar request (PP16/0001 Eviron Road) where the consequences of earlier planning provisions resulted in creation of an allotment without a dwelling entitlement.

A review of documentation received from the applicant, and consideration of Council's previous approach to a similar request has led to a preliminary conclusion that the request has strategic merit; albeit, that no guarantee can be given at this time that a dwelling entitlement will be allocated.

While the intention of this planning proposal is routine in nature, the mechanism proposed to implement this outcome will require development of a new planning provision within LEP 2014 which will ultimately be applied more broadly to all rural land in the Tweed.

Current partial implementation of Action 88 of the RLS

Following discussions with the Department of Planning, Industry and Environment (DPIE), it has been agreed that the most appropriate mechanism to undertake this amendment, and similar requests in the future, is to create a DOM and associated clause in Tweed Local Environmental Plan 2014 (LEP 2014) and include this property as the first registration on the Map.

Due to the extensive historical subdivision of rural land in the Tweed, the result of legislation at the time, allotments with an area substantially less than the MLS are scattered throughout rural Tweed, with nearly 90% of lots in the RU2 Rural Landscape zone less than the 40 hectare MLS for that zone.

The creation of a DOM is a recommendation of the Rural Land Strategy (Action 88); which also includes reference to the establishment of a two year 'sunset clause'.

The intent of this planning proposal is to implement part only of Action 88 of the RLS through the creation of the DOM and associated clause, and register this one property only at this time.

Future full implementation of Action 88 of the RLS

The following explanation is provided to assist in understanding the context of this planning proposal and linkages with possible further amendments not dealt with in this planning proposal.

Tweed Rural Land Strategy Action 88 reads:

“Amend Tweed LEP 2014 clause 4.2B (3) to include a further basis for a dwelling being permitted on an existing lot or parcel of rural zoned land as follows: “... is a lot or a group of lots identified as having 1 dwelling opportunity on the Dwelling Opportunity Map.” After two years delete clauses 4.2B (3) (c) and (d).”

The Implementation Outcome for Action 88 is:

*“Dwelling opportunities will be identified and recorded for future reference.
The need for complex and time consuming dwelling entitlement investigations will be eliminated.
A Dwelling Opportunity Map is prepared and maintained up-to-date.”*

Because a ‘dwelling opportunity’ is assumed to automatically exist for any lot that is equal to or greater than the MLS, a DOM would only be relevant to properties less than the MLS.

While this current planning proposal would result in the creation of the DOM, the full potential of the Map, as defined in Action 88 of the RLS will only be realised through a further separate planning proposal.

This future planning proposal would include a related amendment to LEP 2014 which augmented the clause relating to the DOM to introduce a ‘sunset clause’ which would apply to all rural land.

During the period that the sunset clause applies, owners of lots less than the MLS will be encouraged to provide evidence that a dwelling entitlement exists and have the property registered on the Map.

At expiry of the sunset clause, Council would no longer undertake resource consuming dwelling entitlement searches.

As such, this planning proposal investigates the possibility of allocating a dwelling entitlement to a single property, and at the same time put in place the basis for full implementation of Action 88 of the Rural Land Strategy.

OPTIONS:

That:

1. Proceed with preparation of a planning proposal, with the intent as defined in this report, and forward to the DPIE for a Gateway determination prior to public exhibition and further report and recommendation to Council, or
2. Defer for a workshop.

Option 1 is the recommended option.

PREVIOUS COUNCIL RESOLUTIONS:

Nil.