

26 July 2021

Customer Service | 1300 292 872 | (02) 6670 2400

tsc@tweed.nsw.gov.au
www.tweed.nsw.gov.au

Fax (02) 6670 2429
PO Box 816
Murwillumbah NSW 2484

Please address all communications
to the General Manager

ABN: 90 178 732 496

BNM Projects
15 Beach Avenue
South Golden Beach NSW 2483

To Whom it May Concern

**Dwelling Entitlement Search - Lot 1 DP 818394; Clothiers Creek Road
BOGANGAR**

With reference to your request received regarding the above matter, the following is advised.

Council has recently received legal advice in relation to the procedure for assessing dwelling entitlements. After a review of the advice received it is advised that the subject site does not have the benefit of a dwelling entitlement with reasoning listed below.

The subject site does not meet the minimum lot size requirements of 40 hectares for land zoned 7(l) under the Tweed Local Environmental Plan 2000 (TLEP 2000). Therefore, further investigation was required through the provisions of Clause 57 *Protection of existing dwelling entitlement* of the TLEP 2000.

The only avenue for establishing if a site enjoys the benefits of a dwelling entitlement is Clause 57 Protection of existing dwelling entitlement of the TLEP 2000. Clause 57 of the Tweed LEP 2000 then requires examination of the provisions of the Tweed LEP 1987, as this was the applicable legislation at the time of registration of the subject lot.

The subject lot was created as a result of a boundary adjustment (Subdivision no. S90/7 (as amended)) between Lot 1 DP 240934 and Lot 4 DP 578903, creating the current Lot 1 DP 818394 and Lot 2 DP 1172935, approved by Council in 18 June 1990. Therefore, it must be ascertained if a dwelling entitlement existed prior to the boundary adjustment, and whether the boundary adjustment carried out maintained this dwelling entitlement.

Lot 1 DP 240934 and Lot 4 DP 578903 were created as part of a two (2) lot subdivision approved by Council under the Interim Development Order No. 2 (IDO 2) in November 1970. Lot 1 DP 240934 was approved to be 1.908ha whilst Lot 4 DP 578903 was approved to be 89.11ha. Lot 1 DP 240934 could have been created in accordance with Clause 11(2) subject to Clause 11(5) which permitted an allotment of land to have an area of less than 40 hectares but not less than 2 hectares to be created in a subdivision of land within the 1(a) or 1(b) zone. Lot 4 DP 578903 could have been created in accordance with Clause 11(1) which permitted allotments to be created which had an area of not less than 40 ha. Clause 11 (5) permits a maximum of three (3) allotments where the land has an area of not less than 30 hectares (91.02ha). Therefore the previous lot (being Lot 1 DP 240934) would have had a dwelling entitlement.

However, the boundary adjustment carried out to create current Lot 1 DP 818394 did not retain this dwelling entitlement. Development Application S90/7 was supported by a SEPP 1 objection which was lodged with the application and the Director's concurrence to the objection was issued by the Department of Planning on 12 June 1990. The concurrence was to vary Clause 32(2) of TLEP 1987 which required allotments of not less than 40 hectares. No concurrence was given to vary Clause 32(3) that referred to the 40 hectare development standard for the erection of a dwelling house. Further, Development Consent S90/7 contained Condition 2 which precluded "the erection of a dwelling house on Lot 1 and elsewhere applicable." This has also been registered as a restriction on the Section 88b Instrument for this property.

Therefore, the subject lot does not have a dwelling house entitlement.

If you have any further enquiries in relation to the above matter please do not hesitate to contact Sam Townsend on the above number during normal business hours.

Yours faithfully

Valerie Conway
Team Leader Development Assessment