

Planning Proposal

PROPERTY: 1 Clothiers Creek Road, Bogangar
OUR REF: 230208
DATE: Revised December 2024



**Newton
Denny
Chapelle**

Surveyors
Planners
Engineers

DOCUMENT AND PROJECT DETAILS

Document title:	Planning Proposal
Author:	Rebecca Dinnen
Project manager:	Damian Chapelle
Proponent:	The Landowner
Date of issue:	August 2024 – Revised December 2024
Project address	1 Clothiers Creek Road, Bogangar
Property Description	Lot 1 DP 818394 Parish of Cudgen County of Rous
Registered Owner	Tweed Shire Council
Applicant	Newton Denny Chapelle for and on behalf of the proponent
Local Authority	Tweed Shire Council

PO Box 1138, Lismore NSW 2480
Suite 1, 31 Carrington Street, Lismore (Head Office)
Shop 8/480 Casuarina Way, Casuarina (The Commons)
Phone: (02) 6622 1011
Email: office@ndc.com.au
Web: www.ndc.com.au
ABN: 18 094 689 845



**Newton
Denny
Chapelle** Surveyors
Planners
Engineers

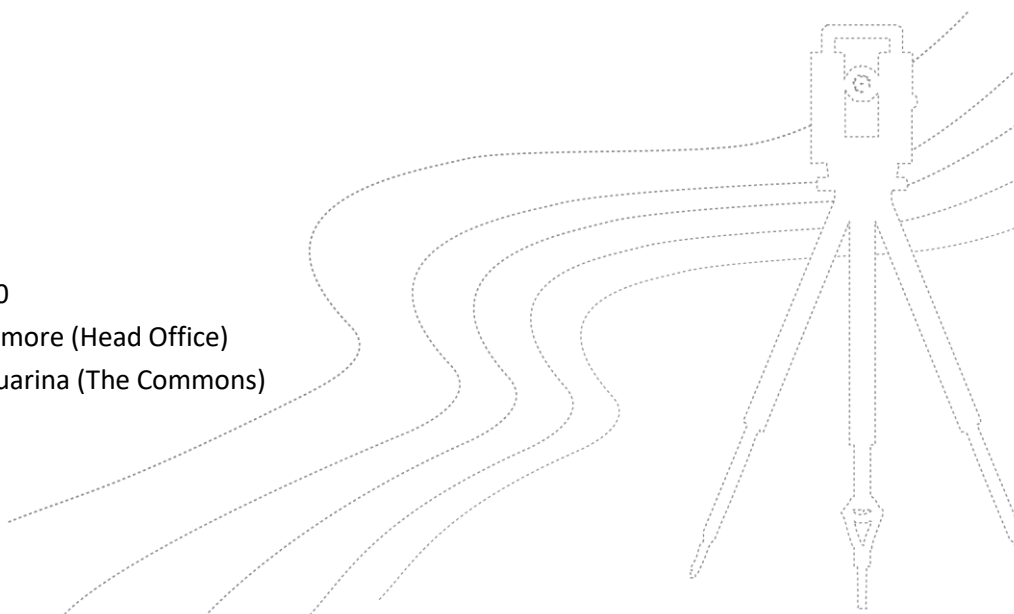


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Executive Summary

This Planning Proposal has been prepared on behalf of the landowner in respect to land described as Lot 1 DP 818394, being 1 Clothiers Creek Road, Bogangar.

Planning Proposal Background

The application proposes to amend the land Zoning Map to zone Lot 1 DP 818394 No. 1 Clothiers Creek Road, Bogangar part C2 Environmental Conservation and part RU2 Rural Landscape provided at **Attachment 1**; and subsequently, amend the Dwelling Opportunity Map adopted into LEP 2014 provided at **Attachment 1a**.

The proposed land use is defined under the Tweed Local Environmental Plan 2014 as follows:

dwelling house means a building containing only one dwelling.

In addition to this, the Tweed Rural Land Strategy 2020-2036, adopted by Council on 7th May 2020, identifies a Policy Direction seeking to provide for a greater diversity of rural housing.

The Rural Land Strategy (RLS) applies not only to the rural zones but also to the environmental protection zones. The subject land is zoned 7(l) *Environmental Protection (Habitat)* and therefore falls within the Rural Land Strategy Policy.

A range of 'key actions' advancing this Policy Direction are identified within the Strategy, include a Dwelling Opportunity Map with the intent to register all known dwelling entitlements, as identified through dwelling entitlement investigations (Action No. 88 of the RLS).

As part of this Planning Proposal, it is proposed to amend the Dwelling Opportunity Map adopted into LEP 2014 allow the property a dwelling entitlement.

Historically the land has been created as a result of a lawful subdivision and boundary adjustment which created Lot 1 being less than the minimum lot size requirement of 40 hectares.

Lot 1 DP 240934 and Lot 4 DP 578903 were created as part of a two (2) lot subdivision approved under the Interim Development Order No. 2 (IDO 2) in November 1970. Lot 1 DP 240934 was approved to be 1.908 hectares and Lot 4 DP 578903 had a lot size of 89.11 hectares.

The subject lot was then 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 on 18th June 1990 (**Attachment 2**). Development Consent S90/7 contained Condition 2 which precluded "the erection of a dwelling house on Lot 1." This has been registered as a restriction on the Section 88b Instrument for this property (**Attachment 3**). Steps will be undertaken as part of the development application process to extinguish this restriction on the use of the land.

A Dwelling Entitlement Search was undertaken from Tweed Shire Council on 26th July 2021 and as a result it was confirmed that the subject site does not have a dwelling entitlement (**Attachment 4**).

The Planning Proposal seeks to facilitate a dwelling on Lot 1 DP 818394 to maximise the development potential of the land and to provide for greater diversity of rural housing as directed in the Tweed Rural Land Strategy. Given that the site is located on the fringe of Cabarita/Bogangar and it not viable for an agriculture land use, there may be merit in allowing the site to be developed for residential occupancy, subject to the constraints over the site being appropriately addressed.

In addition to this, the Draft Growth Management & Housing Strategy aims to provide additional housing whilst still protecting the natural environment and landscape. The subject land does not have a site-specific policy change, however the overall direction of the Strategy is to establish a framework for sustainable development, which in turn creates more opportunity for diverse housing choices. This Planning Proposal facilitates in achieving the aims of the Strategy.

Subject Site

The subject site is located at 1 Clothiers Creek Road, Bogangar. The land is located on the fringe of the Cabarita/Bogangar village as illustrated within **Plate 1**, which provides an aerial view of the site and surrounds.

The subject land, being Lot 1 DP 818394 contains an area of approximately 6.10 hectares and is currently vacant. The site is irregular in shape with a primary frontage to Clothiers Creek Road of approximately 196m. There is a gate and driveway providing access from Clothiers Creek Road in the north eastern corner of the site. There are two access tracks, one along the eastern boundary to the top of the hill and the other cutting more centrally through the site. Old cattle yards are located in the northwest corner of the site, indicating the land has previously been used for grazing. A dam is located in the northeast portion of the site.

The northern portion of the site is generally flat with some undulating topography and contains a thick grassed understory beneath scattered Eucalyptus trees. As the topography rises to the south of the site the Eucalyptus trees grow closer together, with a sparse understory grass.

See **Plate 1** below for further development context:



Plate 1: Locality Plan of the Subject Site

(Source: TSC GIS Mapping)

The subject site is zoned 7(l) *Environmental Protection (Habitat)* pursuant to the Tweed Local Environmental Plan 2000. The current land zonings are illustrated in **Plate 2** of this report.

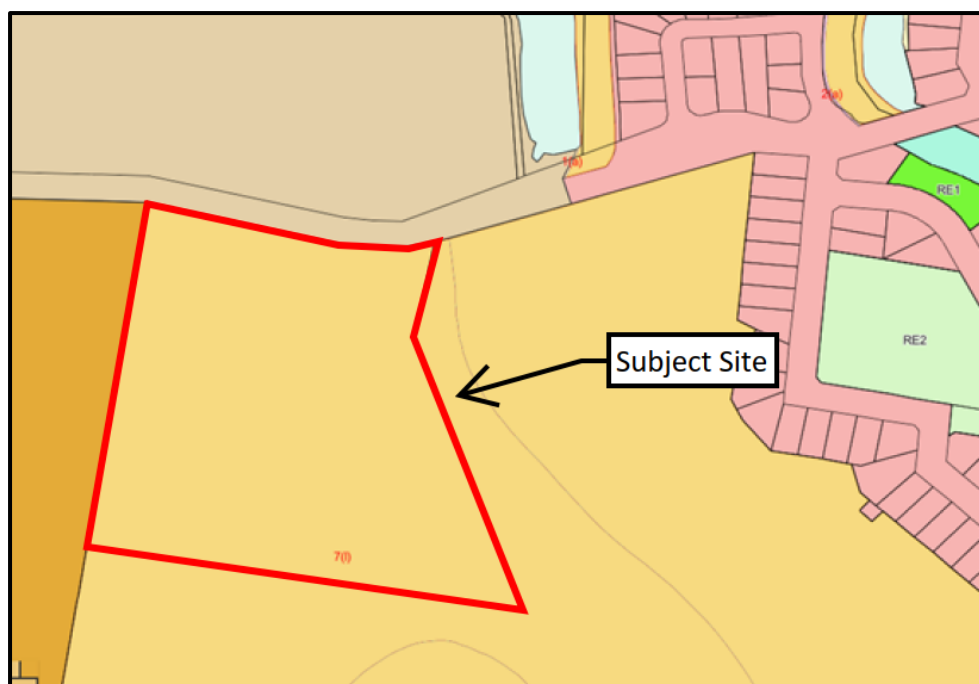


Plate 2: Current Land Zoning

(Source: TSC GIS Mapping)

This report assesses the merits of the Planning Proposal in accordance with the Department of Planning & Environment's *Local Environmental Plan Making Guideline* (August 2023). A Gateway Determination is sought pursuant to Section 3.34 of the *Environmental Planning and Assessment Act 1979*.

Part 1 – Objectives or Intended Outcomes

Objective

The objective of this Planning Proposal is to facilitate a dwelling on the subject lot. This objective will be achieved through an amendment to the land Zoning Map to zone Lot 1 DP 818394 No. 1 Clothiers Creek Road, Bogangar part C2 Environmental Conservation and part RU2 Rural Landscape provided at **Attachment 1**; and subsequently, amend the Dwelling Opportunity Map adopted into LEP 2014 provided at **Attachment 1a** to allow the property a dwelling entitlement.

This is consistent with the adopted strategic policy recommendation under the Rural Land Strategy, as outlined below:

“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.”

(Source: Rural Land Strategy 2020-2036, p. 20, Implementation Action No. 88)

As discussed above, implementation of this Shire-wide objective has been triggered by a site-specific request made by the owners of the land at No. 1 Clothiers Creek Road, Bogangar (Lot 1 DP 818394) seeking to erect a dwelling on an environmental protection allotment which does not have a dwelling entitlement.

This Planning Proposal will seek to amend the LEP by way of undertaking an amendment to the land Zoning Map to zone Lot 1 DP 818394 No. 1 Clothiers Creek Road, Bogangar part C2 Environmental Conservation and part RU2 Rural Landscape; and subsequently, amend the Dwelling Opportunity Map adopted into LEP 2014. Details of the proposed outcomes are provided in the next section.

Intended Outcomes

This Planning Proposal will provide the opportunity to construct a dwelling house on the property.

Part 2 – Explanation of Provisions

The proposal seeks to amend the Tweed LEP 2014 to:

- (1) Amend the land Zoning Map to zone Lot 1 DP 818394 No. 1 Clothiers Creek Road, Bogangar part C2 Environmental Conservation and part RU2 Rural Landscape provided at **Attachment 1**; and then subsequently;
- (2) Amend the Dwelling Opportunity Map adopted into LEP 2014 in accordance with Plan DWE_24 provided at **Attachment 1a**.

Part 3 – Justification

Section A – Need for the Planning Proposal

Q1. Is the planning proposal a result of any strategic study or report?

Somewhat yes. Council is requested to amend the Dwelling Opportunity Map adopted into LEP 2014, aligning with Action 88 of Tweed Rural Land Strategy. This Planning Proposal arises from the need to provide for a dwelling on land that is not viable for agriculture, to maximise the development potential of the land and to provide for greater diversity of rural housing. A change in the permitted land uses will assist in achieving this.

Q2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

It is considered that an amendment to the land Zoning Map to zone Lot 1 DP 818394 No. 1 Clothiers Creek Road, Bogangar part C2 Environmental Conservation and part RU2 Rural Landscape and subsequently, amend the Dwelling Opportunity Map adopted into LEP 2014 is the best means of achieving the objectives and intended outcomes of the Planning Proposal.

Section B – Relationship to Strategic Planning Framework

Q3. Will the planning proposal give effect to the objectives and actions of the applicable regional or district plan or strategy (including any exhibited draft plans or strategies)?

Yes, the Tweed Local Government Area is located within the North Coast region, subject to the NSW North Coast Regional Plan 2041. The vision of this plan is to create *“healthy and thriving communities, supported by a vibrant and dynamic economy that builds on the region’s strengths and natural environment.”*

North Coast Regional Plan 2041

The focus goals under the Regional Plan which are directly applicable to this PP are:

- Goal 1: Liveable, sustainable and resilient;
- Goal 2: Productive and connected; and
- Goal 3: Growth, changes and opportunity

Goal 1. Liveable, sustainable and resilient

The Regional Plan identifies Objectives to support the delivery of Goal 1, including:

- Provide well located homes to meet demand
- Protect regional biodiversity and areas of high environmental value
- Understand celebrate and integrate Aboriginal Culture
- Management and improve resilience to shocks and stresses, natural hazards and climate change.

Whilst this Planning Proposal aims to permit a dwelling house on Environmental Protection zoned land, it protects areas of the site with biodiversity values and limits the impact of mapped hazards on the potential dwelling site. The inclusion of a dwelling on the subject land will provide a well located home close to local amenities. This Planning Proposal avoids risk by being confined to flood-free areas of the site and where bushfire threat can be comfortably accommodated.

Goal 2. Productive and connected

Residential development on this underutilised land would create new housing opportunity while not impacting on wider agricultural or economic practices or infrastructure services.

This Planning Proposal is considered to be consistent with Goal 2 of the NCRP.

Goal 3: Growth, change and opportunity

Residential development on the subject site creates a new housing opportunity and will ensure sustainable development within the coastal strip (which Tweed is nominated as an aim and strategy under the NCRP), as identified within Goal 3.

This Planning Proposal is considered to be consistent with Goal 3 of the NCRP.

Local Government Narratives – Tweed

The Regional Plan recognises that Tweed needs to support ongoing growth through housing and job supply.

The dwelling entitlement will create a housing opportunity within close proximity to the Bogangar/Cabarita village. This Planning Proposal is considered to be consistent with the NCRP, achieving consistency with the directions and actions.

Objective 3 of the NCRP states that Strategic planning and local plans must consider opportunities to protect biodiversity values by among other measures, identifying HEV assets within the planning area at the planning proposal stage through site investigations. As a result, an Ecological Constraints Assessment prepared by *Australian Wetlands Consulting Pty Ltd* has been prepared and is contained within **Attachment 11**. The assessment identifies the HEV assets and that the proposed building envelope will provide the least impacts to the biodiversity values on the site.

The NSW SEED portal has identified the 'Cudgen Link' regional corridor across much of the site. Cudgen Nature Reserve (NR) directly adjoins the property on three sides. These corridors are highly likely to provide connectivity across the landscape for a diverse range of threatened fauna species. It is important that these corridors be protected throughout the development process. If the dwelling is situated on the existing cleared land, it is considered that any existing habitat could be maintained.

The Ecological Constraints Assessment concluded that the future planning pathway should include *design placement and positioning of APZs after bushfire assessment, along with Council requirements, will determine the future planning pathway. To avoid a BDAR and entry to the BOS, at minimum, the proposal would need to stay under the clearing thresholds and avoid works in the BV mapped area. In the circumstance that a BDAR is not required, a Flora and Fauna Assessment (FFA) will be required to provide a detailed assessment of the ecological values of the site. The FFA will provide an impact assessment and measures to avoid or minimise any ecological impacts associated with the development.*

It is considered that this can be appropriately addressed in the submission for a future development application for a dwelling house.

Scenic Landscape Protection Policy

The purpose of this policy is to ensure that the Tweed's exceptional and unique scenic landscape qualities are recognised. The objectives of this policy are to:

- 1. Recognise the visual elements and qualities of the Tweed's landscape character and scenic views that are valued and important to the community.*
- 2. Define a policy mechanism ensuring that local landscape characteristics are properly identified and inform design of new development.*
- 3. Action a framework and matters for consideration for scenic landscape protection and enhancement through visual impact assessment and mitigation.*

This policy and the scenic management principles will be considered as part of any future development application.

Q4. Is the planning proposal consistent with a council LSPS that has been endorsed by the Planning Secretary or GSC, or another endorsed local strategy or strategic plan??

Tweed Community Strategic Plan (CSP) 2022-2032

The Tweed Community Strategic Plan 2022/2032 (CSP) was prepared based on extensive community consultation and provides the overarching framework and vision for the Tweed for the next 10 years.

There are no specific provisions in relation to the proposal within this Community Strategy, However, the proposal is consistent with the vision of the Strategy which is that *"The Tweed will be recognised for its desirable lifestyle, strong community, unique character and environment and the opportunities its residents enjoy"*.

Tweed Local Strategic Planning Statement

The Tweed Local Strategic Planning Statement (LSPS) sets out the 20-year vision for land-use planning in the Tweed LGA. Commentary and actions within the LSPS relevant to this Planning Proposal is limited, however Actions 17.2 and 17.3 specifies as follows:

17.2 Ensure that planning for large lot residential settlements takes into account the natural and physical constraints and opportunities of the land to minimise rural land fragmentation and rural land-use conflicts between residential and other rural land-uses.

17.3 Encourage infill development in proximity to town centres to support their vitality and make efficient use of infrastructure.

The subject site is within close proximity to basic services and transport within the Cabarita/Bogangar village. The site is positioned nearby the existing residential environment and the future proposed dwelling will take into consideration the physical constraints and opportunities of the land to minimise any impacts.

Considering the above, the proposal is consistent with the abovementioned action and upholds the intent of the Tweed LSPS.

NSW Coastal Design Guidelines 2023

The NSW Coastal Design Guidelines aim to improve decision-making, built outcomes and environmental performance in coastal places through strategic planning and urban design. The guidelines give best-practice advice to support the preparation of planning proposals, place strategies and local planning controls. They also aim to shape good urban design outcomes within coastal settlements.

The assessment checklist in Appendix 1 of the Design Guidelines is at **Attachment 5**, which addresses all relevant objectives, outcomes and requirements.

Section B9 – Tweed Coast Strategy

Section B9.7 refers to Environmental & Coastal Issues which relates to this proposal, given the subject land is located within the 7(l) Environmental Protection (Habitat) zone. Whilst the Strategy aims at protecting communities of threatened and endangered species it also strongly recommends that measures be undertaken to protect koalas, threatened species and habitats.

The future Development Application for the dwelling will consider the Tweed Coast Strategy and the Planning Proposal has taken into consideration the environmental constraints over the land.

Section B19 – Bogangar / Cabarita Beach Locality Plan

The subject site is identified on the fringe of the Bogangar / Cabarita Beach Locality Plan. The vision for the locality is *“To retain and enhance the unique natural environmental character and coastal lifestyle offered by Bogangar/Cabarita Beach, whilst embracing high quality development promoting the area as a popular location for residential living, tourism and business”*.

The amendment to the land Zoning Map to zone Lot 1 DP 818394 No. 1 Clothiers Creek Road, Bogangar part C2 Environmental Conservation and part RU2 Rural Landscape, will allow a dwelling to be constructed and the unique environmental character of the site will be maintained and enhanced. It can therefore be concluded that the proposal will have no detrimental impact on the locality.

Q5. Is the planning proposal consistent with any other applicable State and regional studies or strategies??

All applicable state and regional plans have been discussed elsewhere within this Planning Proposal. No further studies or strategies apply.

Q6. Is the planning proposal consistent with applicable SEPPs?

The planning proposal is consistent with relevant State Environmental Planning Policies applying to the Tweed Local Government Area and described below:

SEPP (Biodiversity and Conservation) 2021

The aim of this Policy is to protect the biodiversity values of trees and other vegetation and to preserve the amenity of the area. The Biodiversity Values Map and Threshold Tool indicates that the site has biodiversity values. However, there is a portion of land that is not mapped. It is considered that a dwelling could be constructed to avoid any ecological impacts. The Biodiversity Values map is illustrated in **Plate 3**.

It is acknowledged that the Tweed C Zone Review Project proposes to rezone the subject site part C2 Environmental Conservation and part RU2. As a result, an Ecological Constraints Assessment prepared by *Australian Wetlands Consulting Pty Ltd* has been prepared and is contained within **Attachment 11**. The assessment recommends that a Flora and Fauna Assessment should be prepared for the future development application to ensure that the biodiversity impacts are minimised. The assessment does identify that the proposed building envelope will provide the least impacts to the biodiversity values on the site.

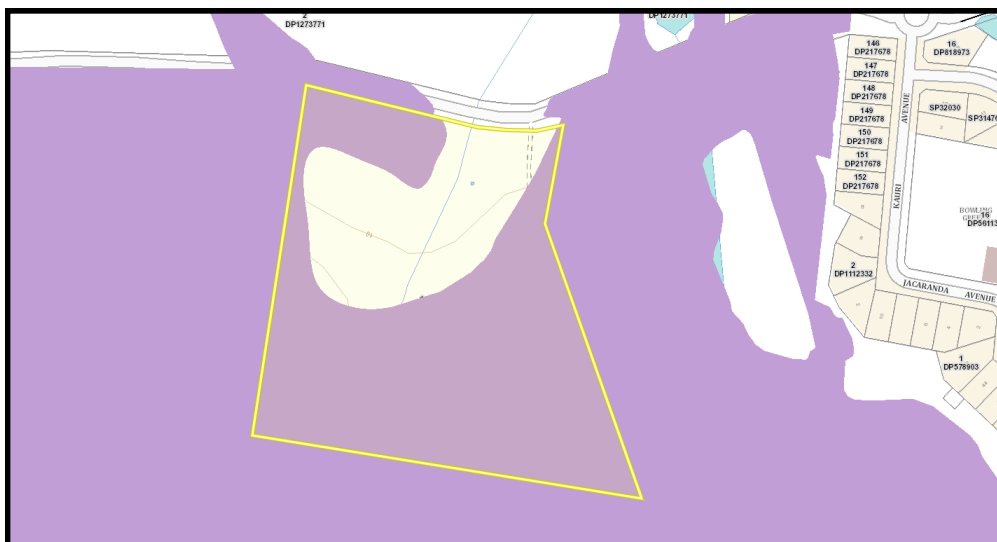


Plate 3: Biodiversity Values Map

(Source: TSC GIS Mapping)

SEPP (Sustainable Buildings) 2022

The aim of this Policy is to encourage the design and delivery of sustainable buildings. The future Development Application for a dwelling house will include a BASIX Certificate ensuring that the dwelling minimises the consumption of energy.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

The aim of this Policy is to manage development in the coastal zone and protect the environmental assets of the coast, through a planning framework which promotes the objects of the Coastal Management Act 2016.

The 'coastal zone' is defined as being the area of land comprising one or more of the following coastal management areas:

- coastal wetlands and littoral rainforest area;
- coastal vulnerability area;
- coastal environment area; and
- coastal use area.

The development site is mapped as being located within the 'Coastal Use Area', 'Coastal Environment Area' and 'Coastal Wetlands Proximity Area' therefore Divisions 1, 3 and 4 within this Chapter of this SEPP are applicable to the proposed development.

The following comments are made with respect to the aforementioned provisions:

- (a) **Foreshore Access** – The subject site is removed from the foreshore, with no physical works being proposed as part of this Planning Proposal. Accordingly, the application does not present opportunities to improve pedestrian access to the foreshore area.
- (b) **Relationship to Surrounding Area** – As outlined above, the site is located on the fringe of the Cabarita/Bogangar village. The surrounding and nearby land uses consist of rural properties, residential development, shops and bowling club. The proposal is to amend the land Zoning Map to zone Lot 1 DP 818394 No. 1 Clothiers Creek Road, Bogangar part C2 Environmental Conservation and part RU2 Rural Landscape, and subsequently; amend the Dwelling Opportunity Map adopted into LEP 2014. Therefore, the proposal will remain consistent with the land uses in the nearby locality.
- (c) **Impact on Amenity of Foreshore** – The subject site is removed from the foreshore area and the proposed land use will not adversely impact on the amenity of the foreshore area.
- (d) **Visual Amenity and Scenic Qualities** – The subject land has a number of viewsheds applicable, therefore the site has scenic qualities, however any future dwelling will be carefully designed and positioned to maintain local viewsheds. The proposed building envelope is located approximately 60m from Clothiers Creek Road and will be concealed by existing vegetation. The future dwelling will be designed to minimise impacts upon neighbouring properties in terms of lighting and noise spillage and will also be carefully designed so as to not be impacted upon by the adjoining properties.
- (e) **Conservation of Biodiversity and Ecosystems** – The existing vacant land comprises a number of established trees with a grassy understorey. There is a dam located in the northern portion of the site. The site is mapped as possessing biodiversity values, however there is a portion that is not mapped. It is considered that a dwelling could be constructed to avoid any ecological impacts.
- (f) **Cumulative Impact** – The inclusion of a dwelling on this property will still enable the land to be rural land. Accordingly, no adverse cumulative effects are envisaged.
- (g) **Protect Aboriginal Cultural Heritage** – The site is mapped as an Aboriginal Place of Heritage Significance and Predictive Aboriginal Cultural Heritage. Consultation was undertaken with the Tweed Byron Local Aboriginal Land Council (TBLAC) for this planning proposal and a formal report is contained within **Attachment 6**. The report concluded that the *“TBLALC has no objection or concerns regarding the proposed rezoning of the property to allow for possible future residential development.”*

In respect to Division 1, only a small portion of the site in the south eastern corner is mapped as ‘proximity to wetlands’. It is considered that development for the purposes of a dwelling house could occur on this land.

In respect to Division 5, Clause 2.12, Development in the coastal zone generally, the proposal is not likely to cause an increased risk of coastal hazards on the subject or adjoining sites.

In respect to Division 5, Clause 2.13, there are no certified coastal management programs applying to the site.

Chapter 4 – Remediation of Land

The objective of Chapter 4 – Remediation of Land, is to promote the remediation of contaminated land for the purpose of reducing risk of harm to human health or any other aspect of the environment. Clause 4.6 of the SEPP relates to contamination and remediation that should be considered in determining a Development Application. A consent authority must firstly consider whether a site is contaminated. If the land is contaminated, the consent authority must be satisfied that the land is suitable in its contaminated state, or it will be suitable after remediation, for the proposed development.

Old cattle yards are located in the northwest corner of the site, indicating the land has previously been used for grazing, as a result a Preliminary Site Investigation Report was prepared by HMC Environmental Consulting (**Attachment 7**) which concluded that the site is suitable for the proposed rezoning and dwelling entitlement.

Q7. Is the planning proposal consistent with applicable Ministerial Directions (section 9.1 Directions) or key government priority?

A commentary of compliance of the Planning Proposal with these Ministerial Directions is provided at **Appendix 1**.

Section C – Environmental, Social and Economic Impact

Q8. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected because of the proposal?

The northern portion of the site is generally flat with some undulating topography and contains a thick grassed understory beneath scattered Eucalyptus trees. As the topography rises to the south of the site the Eucalyptus trees grow closer together, with a sparse understory grass. The site does contain native vegetation and biodiversity values within the property boundaries, however there are patches of cleared land as well as areas that are not mapped as possessing biodiversity values.

The Planning Proposal relates to whether a dwelling is suitable for this site and whilst there are ecological constraints, it is likely that any future dwelling house on the site would be located on previously cleared areas to minimise adverse effects to environmental values.

Q9. Are there any other likely environmental effects of the planning proposal and how are they proposed to be managed?

The key constraints associated with the subject site, including acid sulfate soils, bushfire hazards, Aboriginal cultural heritage, onsite sewage management and land use conflict can be appropriately managed and mitigated as outlined below.

Acid Sulfate Soils

The subject site is mapped as Class 2 and Class 5 acid sulphate soils (refer to **Plate 4**).

An Acid Sulfate Soil Management Plan is required to accompany any application for works below the natural ground surface on Class 2 land and for Class 5 land a Plan is required for works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the water table is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land.

The purpose of this Planning Proposal is to amend the land Zoning Map to zone Lot 1 DP 818394 No. 1 Clothiers Creek Road, Bogangar part C2 Environmental Conservation and part RU2 Rural Landscape. However, when an application is lodged acid sulphate soils will be appropriately managed and the applicant will investigate and address potential ground water interception and dewatering.

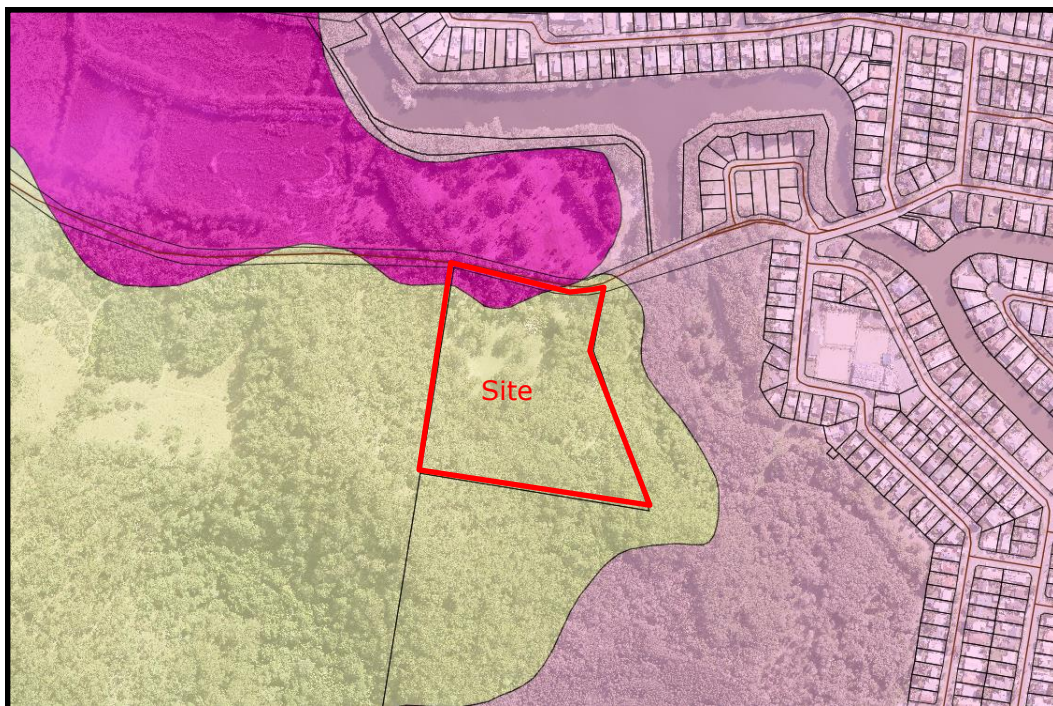


Plate 4: Acid Sulfate Soil Mapping

(Source: TSC GIS Mapping)

Bushfire Prone Land

As shown on **Plate 5**, the site is mapped as bushfire prone land (predominately Vegetation Category 1 and a smaller portion of Vegetation Category 3 in the northern portion of the site). If the Planning Proposal is successful, the future residential development will be regarded as infill development.

A large portion of the site is included in the Biodiversity Values Map and it is preferable to locate a building envelope and associated APZs outside of the Biodiversity Value mapped area in order to avoid triggering the requirement for a Biodiversity Development Assessment Report (BDAR). An indicative building envelope has been nominated within the Preliminary Bushfire Hazard Assessment prepared by Geolink date January 2024 (**Attachment 8**).

In this context, bushfire risk is not considered to impose a significant constraint to the proposed Planning Proposal and will be appropriately addressed at the Development Application stage for any future development.

It is considered that adequate and appropriate bushfire protection measures are available and can be implemented to facilitate future residential development within an indicative building envelope.

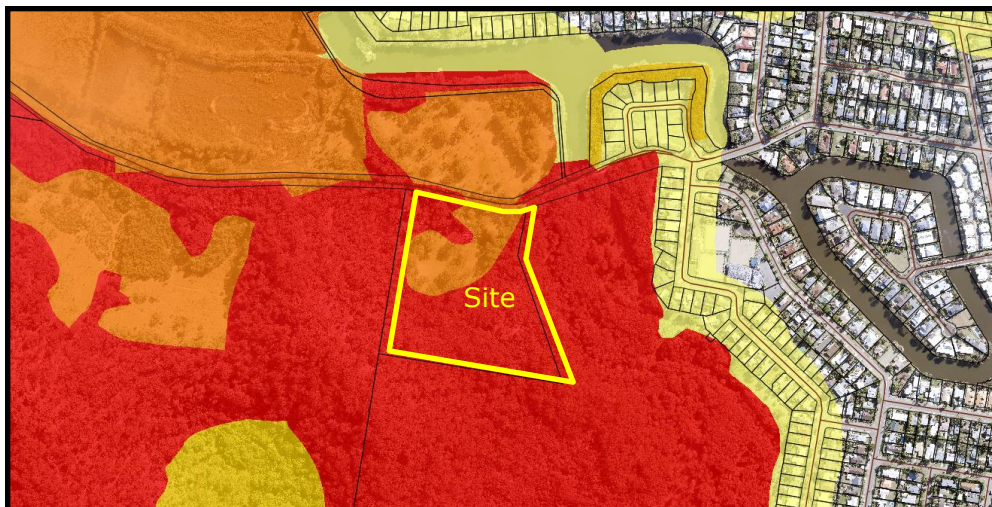


Plate 5: Bushfire Prone Land

(Source: TSC GIS Mapping)

Aboriginal Heritage

As shown on **Plate 6**, the site is mapped as an Aboriginal Place of Heritage Significance and Predictive Aboriginal Cultural Heritage. Consultation was undertaken with the Tweed Byron Local Aboriginal Land Council (TBLAC) for this planning proposal and a formal report is contained within **Attachment 6**.

The report states that the site is generally disturbed by previous land uses and refers to the water tank slab area as being the preferred dwelling location. This is primarily due to the fact it is elevated view platform. However, given the constraints over the land, a building envelope has been identified on a lower section of cleared land.

The report concluded that the “TBLALC has no objection or concerns regarding the proposed rezoning of the property to allow for possible future residential development.”

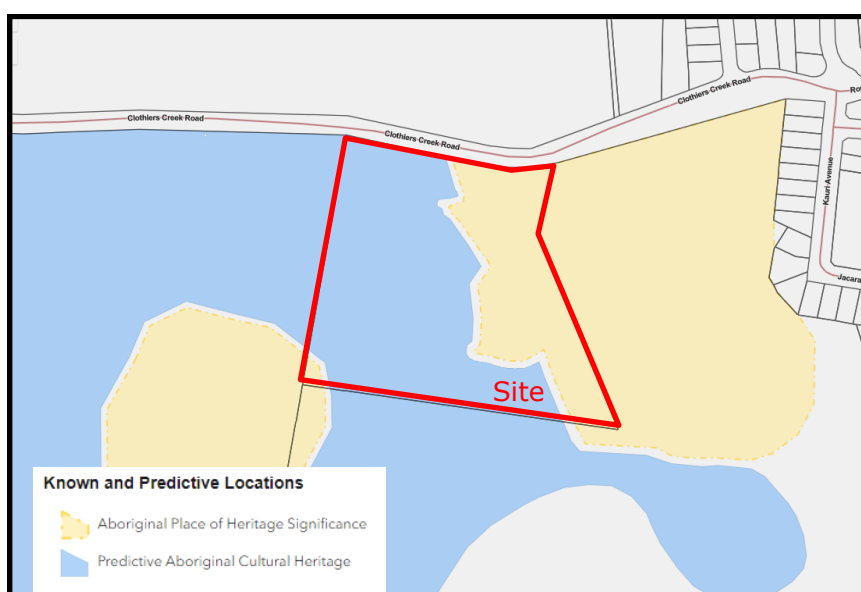


Plate 6: Aboriginal Cultural Heritage

(Source: TSC GIS Mapping)

Flood Prone Land

The front portion of the site adjoining Clothiers Creek Road is mapped as flood prone as identified on **Plate 7**. The front portion of the site is affected and it is considered that the future building envelope for the dwelling will be above the PMF level.

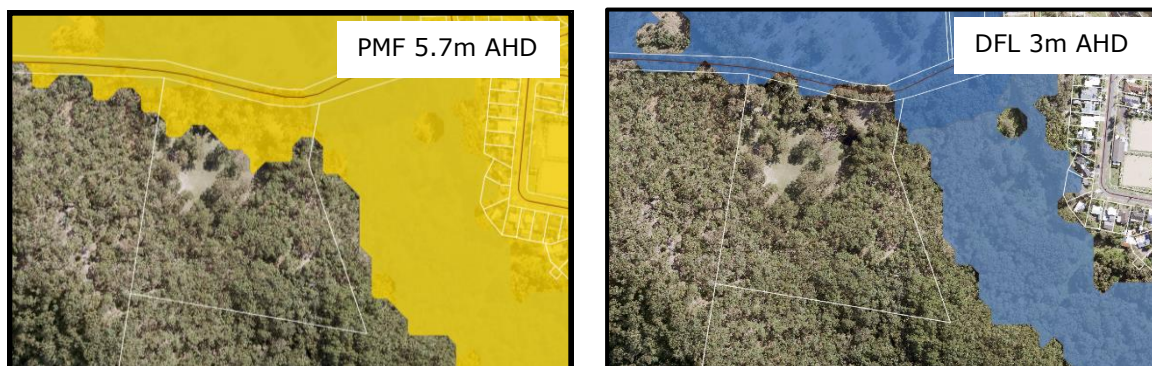


Plate 7: Flood Prone Land

(Source: TSC GIS Mapping)

On Site Sewage Management

An Onsite Sewage Management Assessment was prepared by HMC Environmental Consulting (**Attachment 9**) which confirms that the site is large and exhibits minimal constraints for effluent disposal. It is considered that the site has the capacity to support an onsite sewage management system and that there will be an acceptable level of environmental impact from the conservative design. Therefore, the site is capable of facilitating a dwelling on the lot.

Water and Wastewater

There is an existing water main that runs along Clothiers Creek Road. Should a dwelling house be permitted on the land, the future dwelling house will propose a water connection to Council's public infrastructure. In addition to this, the dwelling will also propose rainwater collection tanks to harvest rainwater for reuse on the site. Specific details will be provided with the future development application for the dwelling house.

Vehicle Access

It is acknowledged that the existing driveway providing access from Clothiers Creek Road in the north eastern corner of the site may not be constructed in accordance with Council policy and the sight distance requirements outlined in AS2890. If the Planning Proposal is successful, the development application for the future dwelling house will identify an appropriate access location to minimise tree removal and will address the relevant requirements and standards.

Land Use Conflict Risk Assessment

Conflict between residential development and agricultural land uses is likely to occur where residential land uses directly abut, or are sufficiently close to, farmland such that they are likely to be affected by agricultural activities. A Preliminary LUCRA prepared by Tim Fitzroy & Associates (**Attachment 10**) has been prepared which identified the surrounding land uses and confirms that there does not appear to be any significant potential land use conflicts between the Planning Proposal and rural activities in the locality.

It is considered that the Preliminary LUCRA adequately demonstrates the relationship between the development site and the adjoining and nearby land. Whilst it is acknowledged that certain farming activities may result in nuisance to adjacent residential area through unavoidable odour drift or noise, these typical conflicts are not considered to be significant and the dwelling design will take into consideration these potential land use conflicts.

As specified in **Plate 8**, the Site Analysis Plan clearly identifies that the site is capable of providing an adequate building envelope clear of the significant constraints over the land.

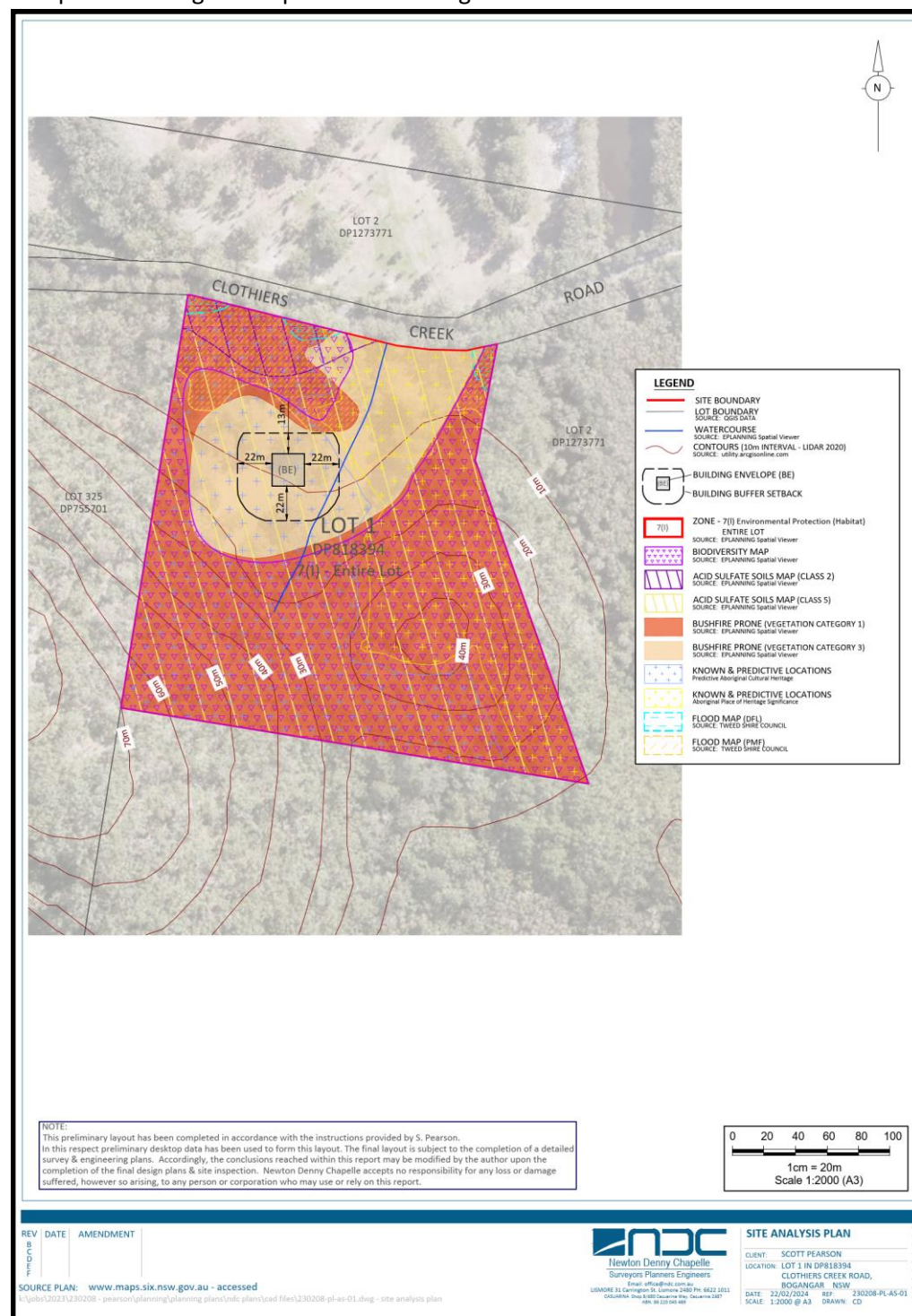


Plate 8: Site Analysis Plan

(Source: Newton Denny Chapelle)

Q10. Has the planning proposal adequately addressed any social and economic effects?

This Planning Proposal is not expected to generate any significant adverse social or economic impacts. This Planning Proposal will enable the development of a single dwelling on the subject site, the use of which is listed as a permitted use with consent. The effect on the local community as a result of this proposal is considered to be minimal.

Section D – State and Commonwealth Interests**Q11. Is there adequate public infrastructure for the planning proposal?**

Consistent with the wider locality, the subject site is not serviced by reticulated water or sewer. An Onsite Sewage Management Assessment was prepared by HMC Environmental Consulting (**Attachment 9**) which confirms that the site is large and exhibits minimal constraints for effluent disposal. It is considered that the site has the capacity to support an onsite sewage management system. In addition to this, the future dwelling house will harvest roof rainwater for re-use.

The subject site is currently serviced by existing power and telecommunications infrastructure. Power supply and the provision of telecommunication services are not expected to be a constraint. The adequacy of existing services will be addressed as part of any future Development Application for the subject site.

This Planning Proposal does not trigger the provision of any significant additions to or upgrading of public infrastructure within the area.

Q12. What are the views of state and federal public authorities and government agencies consulted in order to inform the Gateway determination?

A Gateway Determination has not yet been issued for this Planning Proposal. Relevant authorities, including the NSW Rural Fire Service, will be consulted in accordance with the requirements of the Gateway Determination. The views of consulted public authorities will be summarised and addressed as appropriate, in the final Planning Proposal.

Part 4 – Maps

As described within Part 2 of this Planning Proposal, the specific map proposed to amend Tweed Local Environmental Plan 2014 is as follows:

1. Amend the land Zoning Map to zone Lot 1 DP 818394 No. 1 Clothiers Creek Road, Bogangar part C2 Environmental Conservation and part RU2 Rural Landscape provided at **Attachment 1**, and subsequently;
2. Amend the Dwelling Opportunity Map adopted into LEP 2014 provided at **Attachment 1a**.

All other maps will remain unchanged.

Part 5 – Community Consultation

Council will conduct community consultation in accordance with any Gateway Determination. Public exhibition will be undertaken in accordance with the DPE *Local Environmental Plan Making Guideline – August 2023*.

Typically, community consultation will be commenced with placing a public notice in the local newspapers and on the Tweed Shire Council website. In addition, adjoining landowners will be notified in writing.

Part 6 – Project Timeline

The proposed timeline for the completion of the Planning Proposal is as follows:

Plan Making Steps	Estimated Timeframe
Submit Planning Proposal to DPE	August 2024
Gateway Determination Issued	October 2024
Amend Planning Proposal report in accordance with Gateway and seek additional technical reports as required.	November 2024
Commence agency consultation	December 2024
Commence Public Exhibition	December 2024
Consideration of submissions	January 2025
Report to Council – agency consultation and submission analysis	February 2025
Submission to DPE for finalisation	March 2025
Gazettal of LEP amendment	April 2025

Conclusion

This Planning Proposal seeks to secure a dwelling entitlement for the property at No. 1 Clothiers Creek Road, Bogangar (Lot 1 DP 818394) in order to erect a dwelling on an Environmental Protection allotment which, through historical subdivisions, does not have dwelling entitlement.

To implement this amendment, it is proposed to amend the LEP by way of implementing a new policy mechanism for dealing with dwelling entitlement of undersized rural/environmental protection allotments in Tweed Shire. This objective has been identified and adopted as a strategic policy recommendation under the Rural Land Strategy 2020-2036, as outlined below:

“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.”

(Source: Rural Land Strategy 2020-2036, p. 20, Implementation Action No. 88)

This Planning Proposal will greatly assist in the ongoing issue of determining dwelling entitlement of undersized rural allotments and will ultimately facilitate improved diversity of housing options in the Shire.

We respectfully seek Tweed Shire Council’s support in seeking a Gateway Determination from the Department of Planning & Environment.

APPENDIX 1

Assessment against Section 9.1 Ministerial Directions

Ministerial Direction	Requirements	Compliance
1. Planning Systems		
1.1 Implementation of Regional Plans	Planning Proposals must be consistent with a Regional Plan released by the Minister for Planning.	Consistent – See Section B of this Planning Proposal.
1.2 Development of Aboriginal Land Council land	Not applicable	Not applicable.
1.3 Approval and Referral Requirements	A Planning Proposal should not contain provisions requiring concurrence, consultation or referral of a Minister or public authority without approval from the relevant Minister or public authority; and the Director General of the Department of Planning. It must not identify development as designated development unless justified.	Not applicable. No such provisions are proposed.
1.4 Site Specific Provisions	A Planning Proposal to allow a particular land use to be carried out must either; (a) allow that land use to be carried out in the zone the land is situated on, or (b) rezone the site to an existing zone already applying in the environmental planning instrument that allows that land use without imposing any development standards or requirements in addition to those already contained in that zone, or (c) allow that land use on the relevant land without imposing any development standards or requirements in addition to those already contained in the principal environmental planning instrument being amended.	Consistent.
1. Planning Systems – Place Based		
1.5 – 1.22	Not applicable	Not applicable

Ministerial Direction	Requirements	Compliance
3. Biodiversity and Conservation		
3.1 Conservation Zones	<p>(1) A planning proposal must include provisions that facilitate the protection and conservation of environmentally sensitive areas.</p> <p>(2) A planning proposal that applies to land within a conservation zone or land otherwise identified for environment conservation/protection purposes in a LEP must not reduce the conservation standards that apply to the land (including by modifying development standards that apply to the land). This requirement does not apply to a change to a development standard for minimum lot size for a dwelling in accordance with Direction 9.2 (2) of "Rural Lands"</p>	<p>Applies</p> <p>The site is marked within the Draft Tweed Conservation Zone Review (PP23/0001). It is proposed to split the zoning to RU2 Rural Landscape & C2 Environmental Conservation. This Planning Proposal is consistent with this Draft Planning Proposal as the proposed building envelope is positioned outside the environmental management zone.</p>
3.2 Heritage Conservation	Planning proposal must incorporate provisions for conservation of European and Aboriginal heritage items or places.	<p>Consistent - Consultation was undertaken with the Tweed Byron Local Aboriginal Land Council (TBLAC) for this planning proposal and a formal report is contained within Attachment 6. The report concluded that the <i>"TBLAC has no objection or concerns regarding the proposed rezoning of the property to allow for possible future residential development."</i></p>
3.3 Sydney Drinking Water Catchments	Not applicable	Not applicable
3.4 Application of C2 and C3 Zones and Environmental Overlays in Far North Coast LEPs	A planning proposal that introduces or alters an C2 Environmental Conservation or C3 Environmental Management zone or an overlay and associated clause must apply that proposed C2 Environmental Conservation or C3 Environmental Management zone, or the overlay and associated clause, in line with the Northern Councils E Zone Review Final Recommendations	<p>Applies</p> <p>The site is marked within the Draft Tweed Conservation Zone Review (PP23/0001). It is proposed to split the zoning to RU2 Rural Landscape & C2 Environmental Conservation. This Planning Proposal is consistent with this Draft Planning Proposal as the proposed building envelope is positioned outside the environmental management zone.</p>

Ministerial Direction	Requirements	Compliance
3.5 Recreation Vehicle Areas	Not applicable	Not applicable
3.6 – 3.10	Not applicable	Not applicable
4. Resilience and Hazards		
4.1 Flooding	This direction applies to all relevant planning authorities that are responsible for flood prone land when preparing a planning proposal that creates, removes or alters a zone or a provision that affects flood prone land.	Applies The site is flood prone across the front of the site. The design flood level is 3.0m(AHD). Any future dwelling is capable of meeting flood provisions.
4.2 Coastal Management	This direction applies when a planning proposal authority prepares a planning proposal that applies to land that is within the coastal zone, as defined under the Coastal Management Act 2016 - comprising the coastal wetlands and littoral rainforests area, coastal vulnerability area, coastal environment area and coastal use area - and as identified by chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021.	Complies In respect to Division 1, only a small portion of the site in the south eastern corner is mapped as 'proximity to wetlands'. It is considered that development for the purposes of a dwelling house could occur on this land. The NSW Coastal Design Guidelines 2023 Checklist is contained within Attachment 5 .
4.3 Planning for Bushfire	A Planning Proposal in bush fire prone land: (a) Is to be referred to the Commissioner of the NSW Rural Fire Service following receipt of a gateway determination and prior to community consultation. (b) Have regard to Planning for Bush Fire Protection 2019. (c) Restrict inappropriate development from hazardous areas. Ensure bush fire hazard reduction is not prohibited within the APZ.	Pending consultation with RFS. This Direction applies to the Planning Proposal as some of the subject land is mapped as bushfire prone land.
4.4 Remediation of Contaminated Land	This direction applies when a planning proposal authority prepares a planning proposal that applies to: (a) land that is within an investigation area within the meaning of the Contaminated Land Management Act 1997, (b) land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out,	Applies A Preliminary Site Investigation report has been prepared by HMC Environmental Consulting (Attachment 4).

Ministerial Direction	Requirements	Compliance
	<p>(c) the extent to which it is proposed to carry out development on it for residential, educational, recreational or childcare purposes, or for the purposes of a hospital – land:</p> <ul style="list-style-type: none"> i. in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out, and ii. on which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge). 	
4.5 Acid Sulfate Soils	This direction applies when a planning authority prepares a planning proposal that will apply to land having a probability of containing acid sulfate soils.	<p>Applies.</p> <p>The subject site is mapped as Class 2 and Class 5 acid sulphate soils. An Acid Sulfate Soil Management Plan is required to accompany any application for works below the natural ground surface on Class 2 land and for Class 5 land a Plan is required for works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the water table is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land.</p>
4.6 Mine Subsidence and Unstable Land	<p>Applies to mine subsidence areas.</p> <p>Applies to areas identified as unstable.</p>	Not applicable
5. Transport and Infrastructure		
5.1 Integrating Land Use and Transport	<p>A planning proposal must locate zones for urban purposes and include provisions that give effect to and are consistent with the aims, objectives and principles of:</p> <ul style="list-style-type: none"> (a) <i>Improving Transport Choice – Guidelines for planning and development</i> (DUAP 2001), and (b) <i>The Right Place for Business and Services – Planning Policy</i> (DUAP 2001). 	<p>Consistent</p> <p>The site is readily serviced by the existing local road network.</p>

Ministerial Direction	Requirements	Compliance
	<p><i>Improving Transport Choice</i> (p34) states “New residential areas should:</p> <ul style="list-style-type: none"> • adjoin or be within the existing urban footprint or located on new public transport corridors — pockets of development should not be isolated, except in the short-term — this includes staged release areas ‘ • be substantially within five kilometres of an existing or programmed railway station or equivalent mass transit node, such as a transitway stop, served at least every 15 minutes in the peak hour, and conform to the accessibility criteria outlined above.” 	
5.2 Reserving Land for Public Purposes	A Planning Proposal must not create, alter or reduce existing zonings or reservations of land for public purposes without approval of the relevant public authority and the Director General of the Department of Planning.	Not applicable.
5.3 Development Near Regulated Airports and Defence Airfields	This direction applies to all relevant planning authorities when preparing a planning proposal that will create, alter or remove a zone or a provision relating to land near a regulated airport which includes a defence airfield.	Not applicable.
5.4 Shooting Ranges	This direction applies to all relevant planning authorities when preparing a planning proposal that will affect, create, alter or remove a zone or a provision relating to land adjacent to and/ or adjoining an existing shooting range.	Not applicable.
6. Housing		
6.1 Residential Zones	<p>(1) A planning proposal must include provisions that encourage the provision of housing that will:</p> <ul style="list-style-type: none"> (a) broaden the choice of building types and locations available in the housing market, and (b) make more efficient use of existing infrastructure and services, and (c) reduce the consumption of land for housing and associated urban development on the urban fringe, and (d) be of good design. <p>(2) A planning proposal must, in relation to land to which this direction applies:</p>	Not applicable.

Ministerial Direction	Requirements	Compliance
	<p>(a) contain a requirement that residential development is not permitted until land is adequately serviced (or arrangements satisfactory to the council, or other appropriate authority, have been made to service it), and</p> <p>(b) not contain provisions which will reduce the permissible residential density of land.</p>	
6.2 Caravan Parks and Manufactured Home Estates	Not applicable	Not applicable
7. Industry and Employment		
7.1 Business and Industrial Zones	Not applicable	Not applicable
7.2 Reduction in non-hosted short-term rental accommodation period	Not applicable	Not applicable
7.3 Commercial and Retail Development along the Pacific Highway, North Coast	Not applicable	Not applicable
8. Resources and Energy		
8.1 Mining, Petroleum Production and Extractive Industries	Not applicable	Not applicable
9. Primary Production		
9.1 Rural Zones	A planning proposal must: (a) not rezone land from a rural zone to a residential, business, industrial, village or tourist zone.	Not applicable.
9.2 Rural Lands	<p>1. A planning proposal must:</p> <p>(a) be consistent with any applicable strategic plan, including regional and</p>	Not applicable.

Ministerial Direction	Requirements	Compliance
	<p>district plans endorsed by the Planning Secretary, and any applicable local strategic planning statement</p> <p>(b) consider the significance of agriculture and primary production to the State and rural communities</p> <p>(c) identify and protect environmental values, including but not limited to, maintaining biodiversity, the protection of native vegetation, cultural heritage, and the importance of water resources</p> <p>(d) consider the natural and physical constraints of the land, including but not limited to, topography, size, location, water availability and ground and soil conditions</p> <p>(e) promote opportunities for investment in productive, diversified, innovative and sustainable rural economic activities</p> <p>(f) support farmers in exercising their right to farm</p> <p>(g) prioritise efforts and consider measures to minimise the fragmentation of rural land and reduce the risk of land use conflict, particularly between residential land uses and other rural land use</p> <p>(h) consider State significant agricultural land identified in chapter 2 of the State Environmental Planning Policy (Primary Production) 2021 for the purpose of ensuring the ongoing viability of this land</p> <p>(i) consider the social, economic and environmental interests of the community.</p> <p>(2) A planning proposal that changes the existing minimum lot size on land within a rural or conservation zone must demonstrate that it:</p> <p>(a) is consistent with the priority of minimising rural land fragmentation and land use conflict, particularly between residential and other rural land uses</p> <p>(b) will not adversely affect the operation and viability of existing and future rural land uses and related enterprises,</p>	

Ministerial Direction	Requirements	Compliance
	<p>including supporting infrastructure and facilities that are essential to rural industries or supply chains</p> <p>(c) where it is for rural residential purposes:</p> <ul style="list-style-type: none"> i. is appropriately located taking account of the availability of human services, utility infrastructure, transport and proximity to existing centres ii. is necessary taking account of existing and future demand and supply of rural residential land 	
9.3 Oyster Aquaculture	Not applicable.	Not applicable.
9.4 Farmland or State and Regional Significance on the NSW Far North Coast	<p>A planning proposal may be inconsistent with the terms of this direction only if council can satisfy the Planning Secretary (or an officer of the Department nominated by the Secretary) that the planning proposal is consistent with:</p> <ul style="list-style-type: none"> (a) the North Coast Regional Plan 2036, or (b) Section 4 of the report titled Northern Rivers Farmland Protection Project - Final Recommendations, February 2005, held by the Department of Planning and Environment. 	Not applicable.