

REZONING REVIEW – Briefing Report

Date of referral	29 June 2020
Department ref. no	RR_2020_TWEED_001_00
LGA	Tweed
LEP to be amended	Tweed LEP 2014
Address	225 Terranora Road, Banora Point. (Lot 16, DP 856265)
Reason for review	Council notified the proponent it will not support the proposed amendment
Is a disclosure statement relating to reportable political donations under s10.4 of the Act required and provided?	Not required. The proponent confirmed it had no donations or gifts to disclose.

1. SUMMARY OF THE PROPOSAL

1.1 Background

This Rezoning Review seeks to amend the Tweed LEP 2014 to enable large lot residential development to occur on part of the subject land. A request for Tweed Shire Council to prepare a planning proposal was lodged in February 2020. The request was not supported by Council at its meeting in May 2020.

The planning proposal request, prepared by Planit Consulting Pty Ltd on behalf of the landowners, seeks to rezone part of the subject land to R5 Large Lot Residential, amend the minimum lot size provisions, height of buildings and floor space ratio provisions and other planning controls to ensure consistency with the adjacent R5 zoned area (Attachment E4).

The landowners have previously sought Council's support for the rezoning in 2016 and 2019. Each previous request included concept subdivision plans for the site ranging from 2 to 30 lots. This planning proposal request has not included a preferred lot layout because the proponent is seeking development controls to be considered on merit and not an assessment of development outcomes. This approach makes it difficult to determine whether the proposal is appropriate due to a lack of detail about the density of development. However, the proposed changes to the minimum lot size provisions by this rezoning request would enable the development of around 9 new lots.

Council has maintained a consistent stance on the development of this site which is reflected in its most recent resolution from May 2020. Council has repeatedly resolved to support the rezoning of the land to the extent that it permits only a two-lot subdivision for the purposes of residential use.

1.2 Locality and context

The site is located adjacent to the existing residential area of Banora Point and approximately 3.5 kilometres south-west of the Tweed Heads South commercial centre. It has frontage to Terranora Road to the north and Old Ferry Road and the Tweed River to the south. The site is within a vegetated escarpment and adjoins existing established large lot residential holdings (Attachment A).

1.3 Site description

The site is 10.04 hectares in area and is predominantly vacant with a shed located on the land. Only part of the site is proposed to be rezoned. This land is located in the north on the site with access to Terranora Road (Attachment B). It currently comprises cleared grassland and the shed. This portion of the site is approximately 3.6 hectares in area and was previously used as a hard rock quarry. The quarry is no longer in operation. The land has been somewhat remediated. Dense vegetation covers the steeper land and does not form part of the proposed rezoning footprint. A 10-metre-wide lot handle links with Terranora Road and provides vehicle access to the area being rezoned and the existing shed.

The site also has a history of illegal dwelling construction and the placement of fill without consent as detailed in the Council reports at Attachment F1 – F3. The matter of the alleged illegal fill appears to be resolved based on emails between Council and the proponent's consultant (Attachment E5).

1.4 Current planning provisions

The site is covered by both the Tweed LEP 2014 and the Tweed LEP 2000.

The site is partly zoned R5 Large Lot Residential and part RU2 Rural Landscape under the Tweed LEP 2014. Land deferred from the Tweed LEP 2014 is partly zoned 7(d) Environmental Protection (Scenic/Escarpment), part 1(a) Rural and part 1(c) Rural Living under the Tweed LEP 2000. (Attachment C)

The 3.6ha of land subject to this rezoning request is primarily zoned 7(d) Environmental Protection (Scenic/Escarpment) under the Tweed LEP 2000. The subdivision of the land to less than 40 hectares is prohibited in the 7(d) Zone. The small portion of R5 zoned land includes the access handle and has the following planning controls:

- Maximum height of buildings of 9m;
- Maximum floor space ratio of 0:55:1;
- Class 5 Acid Sulphate soil classification; and
- Minimum lot size of 1ha, however, the Tweed LEP 2014 permits the subdivision of this land to 4,000m² via clause 4.2A Subdivision on land in Zone R5.

1.5 Proposed planning provisions

It is proposed that the 3.6ha part of the site be brought into the Tweed LEP 2014 and land zoning and development standard provisions applied to match the adjoining large lot residential zoned land.

This would include making the following amendments to the Tweed LEP 2014:

- amending the Land Application Map to bring the land into the LEP;
- applying a Class 5 acid sulfate soils classification;
- applying a 0.55:1 maximum floor space ratio;
- applying a 9m maximum height of building provision;
- applying a 1ha minimum lot size and extending "Area A" to permit subdivision to 4,000m² in accordance with clause 4.2A Subdivision on land in Zone R5; and
- applying a R5 Large Lot Residential zoning.

These development provisions would be consistent with the adjacent land to the north currently zoned R5. The proposed changes to the Tweed LEP 2014, except for the land application map change, are shown at Attachment D.

2. INFORMATION ASSESSMENT

Does the proposal seek to amend a zone or planning control that is less than five years old?

No. The Tweed LEP 2014 came into force over 6 years ago. The deferred land on this site has retained its 7(d) Environmental Protection (Scenic/Escarpment) zoning since the Tweed LEP 2000 was made.

This site was the subject of a previous planning proposal that was issued a Gateway determination in 2017 (PP_2017_TWEED_003_01) (Attachment G). At its meeting in November 2016, Council resolved to limit the future subdivision of the land to two lots, prior to forwarding the planning proposal to the Department for a Gateway determination. The Department considered the planning proposal on this basis and issued the Gateway determination on 8 May 2017 (PP_2017_TWEED_003_01). Following the Gateway determination being issued, Council withdrew the planning proposal at the request of the landowner, due to concerns with this two-lot restriction and the limits it would apply to the development of the land.

In August 2019, the proponent sought Council's support to prepare another planning proposal that would have removed the two-lot restriction. Council resolved not to support the request and the resolution of November 2016 stood.

2.1 Strategic merit test

Consistency with the relevant regional plan - North Coast Regional Plan 2036

The planning proposal request includes discussion on consistency with the North Coast Regional Plan 2036 (Regional Plan).

The proposal is generally consistent with the intent of the Regional Plan despite there being minor inconsistencies with some of the actions.

The actions within the Regional Plan that are relevant to the planning proposal request are:

- Action 1.1 - Focus future urban development to mapped urban growth areas.

The land is not located within the urban growth area for Terranora as defined in the Regional Plan. However, there is a large area of R5 Large Lot Residential zoned land in this vicinity which is also outside the urban growth area. In addition, it is considered that the rezoning of the site meets the Urban Growth Area Variation Principles contained in the Regional Plan.

- Action 18.2 - Undertake Aboriginal cultural heritage assessments to inform the design of planning and development proposals so that impact to Aboriginal cultural heritage are minimised and appropriate heritage management mechanisms are identified.

The land is mapped under Council's Aboriginal Cultural Heritage Management Plan 2018 as containing 'predictive' areas of Aboriginal Cultural Heritage due to the Terranora ridgeline being a preferred land type for former Aboriginal passage and observation. However, as the land has historically been cleared and used as a quarry, the potential for this land containing Aboriginal cultural heritage items is considered to be low.

- Action 21.2 – Maximise the cost-effective and efficient use of infrastructure by directing development towards existing infrastructure and promoting the co-location of new infrastructure.

The land is not serviced by reticulated sewer or water infrastructure. The planning proposal request indicates that Council has identified there is no capacity in the existing water and sewer services to accommodate the proposed additional lots. Augmenting the services at the cost to the developer is not likely to be feasible. The planning proposal request seeks to develop the land using onsite rainwater collection (Attachment E9) and on-site sewage disposal (Attachment E10). Council has raised concern with the on-site sewage disposal due to the former use of the land as a quarry stripping the area of topsoil and the likelihood of upslope seepage preventing the safe disposal of waste.

The proposal is not inconsistent with this Action as it will not require the provision of significant new infrastructure to service the proposed development site. However, Council would need to be satisfied that on-site water and sewage disposal is appropriate.

- Action 24.1 - Facilitate the delivery of well-planned rural residential housing areas by:
 - identifying new rural residential areas in a local growth management strategy or rural residential land release strategy endorsed by the Department of Planning and Environment; and
 - ensure that such proposals are consistent with the Settlement Planning Guidelines: Mid and Far North Coast Regional Strategies (2007) or land release criteria (once finalised).

The proposal is inconsistent with this action as Tweed Shire Council does not have a rural residential land release strategy. This planning proposal request does not include an assessment against the Settlement Planning Guidelines however it was identified in the Department's assessment of the previous planning proposal in 2017 that:

1. The site is largely unconstrained by flooding and acid sulfate soils. It is expected that bushfire and geotechnical instability risk can be mitigated at development application stage and adequate evacuation routes to non-bushfire prone land exist. The potential visual impact of the future development of the land can be further addressed at development application stage;
2. The existing 7(d) zoned land will provide an appropriate buffer between the proposed R5 zone and the future development and the surrounding natural landscape features; and
3. The proposed rural residential development is located adjoining existing rural residential land and is close to the local centre of Banora Point and the larger centre of Tweed Heads. The land is not identified for future urban expansion meaning the proposal will not prevent the land from being developed for an identified higher purpose.

It must be noted that the above points were made when assessing a proposal with a 2-lot subdivision potential and not the greater number sought in this instance.

- Action 24.2 - Enable sustainable use of the region's sensitive coastal strip by ensuring new rural residential areas are located outside the coastal strip, unless already identified in a local growth management strategy or rural residential land release strategy endorsed by the Department of Planning and Environment.

The site is within the coastal strip identified in the Regional Plan. The planning proposal request is inconsistent with this action as it proposes a new rural-residential development within the coastal strip. This inconsistency is considered to be of minor significance as the development is minor in scale,

yielding 2-9 lots, and rezones a small area (3.6ha) adjoining an existing developed area zoned R5 in the coastal strip.

The proposal is generally consistent with the intent of the Regional Plan, despite minor inconsistencies with some of the actions.

Northern Councils E Zone Review Final Recommendations Report

The land proposed to be rezoned currently has an environmental zoning under the Tweed LEP 2000. It is considered that the proposal is generally consistent with the final recommendations of the E Zone Review. The land is not being used for environmental conservation or management and does not contain attributes that meet the criteria for an E2 or E3 zone. Other parts of the lot may include areas that would satisfy the final recommendations, such as the vegetated escarpment, but this area does not form part of this rezoning request.

Consistency with a relevant local strategy that has been endorsed by the Department.

Tweed Shire Council does not have a rural residential land release strategy for the local government area. The proposal is not inconsistent with Council's Community Strategic Plan.

The Tweed Local Strategic Planning Statement was adopted in June 2020. The planning proposal request does not address the LSPS as it was prepared prior to its adoption. Like the Regional Plan, there are a variety of actions within the LSPS that would relate to this proposal, including:

- Action 5.1 - Promote compact and contained coastal urban areas, to maintain separation between neighbouring coastal villages and centres and avoid continuous ribbon development along the coast.
- Action 5.2 - Safeguard sensitive and ecologically diverse coastal environments from urban encroachment to maintain and protect the biological function, visual and natural character of the coastal area.
- Action 16.2 - Ensure housing supply is planned to meet the growth demands and demographic changes.
- Action 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.

The proposal is generally consistent with the intent of the Tweed LSPS.

Responding to a change in circumstances, such as investment in new infrastructure or changing demographic trends that have not been recognised by existing planning controls.

The rezoning request is not responding to a change in circumstances, such as investment in new infrastructure or changing demographic trends that have not been recognised by existing planning controls but rather a change in the land use of the site. Due to the land not being used as a quarry there is a change in circumstance for the site.

2.2 Site-specific merit test

The natural environment (including known significant environmental values, resources or hazards).

The proposed area being rezoned is predominantly zoned 7(d) Environmental Protection (Scenic/Escarpment) due to its location along the escarpment at Terranora. The primary objective of the zone is to protect and enhance areas of particular scenic value to the area of Tweed, minimise soil erosion from escarpment areas, prevent development in geologically hazardous areas, and maintain the visual amenity of prominent ridgelines and

areas. The secondary objective of the zone is to allow other development that is compatible with the primary function of the zone.

Ecological

The area proposed to be rezoned is unlikely to hold significant ecological values due to its previous use as a quarry. The flora and fauna assessment supporting this rezoning request states that the proposal will not adversely affect critical habitat or threatened species, populations or ecological communities (Attachment E8).

Visual

A visual impact analysis supports this rezoning request (Attachment E13 and E14). It was undertaken to determine how development of the site may influence the landscape and scenic quality of the area and how this is experienced. The assessment was based on a concept subdivision layout of nine lots and concludes that residential development on the site would be consistent with the existing landscape and scenic amenity. The analysis identified the significance of the impact to the neighbouring lots would be moderate to minor due to their raised elevation and orientation.

Despite the report's findings, the rezoning request notes that *"These assumptions are based off a concept design for the site, which this request is not claiming to be the intended or proposed development outcome at the site. Rather, this request contends that the analysis simply indicates that there is significant opportunity for residential development to occur on the site without detrimentally impacting scenic quality. Any future proposed development on the land would need to confirm how this will be achieved. This outcome can be suitably guided by the zone objectives and Council's own development controls..."*

The lack of a concept plan for the site also means that future development of the land may have more significant impacts on the local area.

Contamination

The rezoning request is supported by a preliminary investigation into the potential for contaminated soils (Attachment E6). The investigation concluded that the land is suitable for residential use. In light of the recent site investigations, contamination is considered to be suitably addressed and the provisions of Ministerial Direction 2.6 Remediation of Contaminated Land satisfied.

Cultural Heritage

Tweed Shire Council has mapped the Terranora Ridgeline as an area of predictive significance under its Aboriginal Cultural Heritage Management Plan. As the site has been substantially disturbed through its use as a quarry, the land proposed to be rezoned is unlikely to contain items of Aboriginal cultural heritage. The previous Gateway determination issued for the site required an Aboriginal Cultural Heritage assessment to occur prior to exhibition of the planning proposal. If supported, a similar condition on the Gateway determination would be recommended.

Land Capability

The rezoning request is supported by a preliminary geotechnical investigation that has considered the characteristics of the land, previous use as a quarry and existing soil materials (Attachment E11). It identified the level of uncontrolled fill on the site, slope stability and sub-surface and surface drainage control as the key geotechnical constraints on the site. These risks greatly impact upon the ability to provide safe areas for roads, infrastructure and dwellings to be constructed.

Although the report generally concludes that the key geotechnical constraints on the site can be alleviated by risk mitigation measures, such as the remediation of the uncontrolled fill, battering of slopes and the control of stormwater, these measure are likely to impact upon the number of lots that can be constructed on the site. It is considered that further

investigation into how the mitigation of geotechnical risks outlined in the preliminary report will impact the future subdivision of the land is necessary before the rezoning of the land is finalised.

Onsite effluent disposal.

It would appear that the rezoning request proposes to utilise on-site effluent disposal and rainwater harvesting for the development of the land however, the supporting information inconsistently refers to the use of Council 's reticulated sewer and water service and on-site management of effluent disposal and water harvesting. This is due to the supporting information being prepared over a number of years and for different iterations of the rezoning proposals put to Council.

The rezoning request includes a preliminary assessment of the on-site water and wastewater systems for the proposed development (Attachment E9). The preliminary assessment is based on lots of 4,000m² and identifies the most appropriate method of onsite effluent disposal is a surface spray irrigation system using advanced secondary treated and disinfected effluent. A minimum disposal area of 240m² would be required per lot. This area uses assumptions of the irrigation area's slope and topsoil type and identifies buffers to dwellings, rainwater tanks, property boundaries and stormwater channels. All these factors will impact up the design and subdivision layout for this site and should be considered and incorporated with any necessary geotechnical risk mitigation earthworks when designing a subdivision layout to determine an appropriate density of this development for this site.

A second On-site Sewage Management Assessment Report (Attachment E10) is also provided that recommends a different disposal method requiring 600m² of land for effluent application vis sub-surface irrigation. This report does not specify if any dwelling density (e.g. 9 lots) was used in the assessment, or whether the recommendation related to only one dwelling on the site.

The two reports conclude on-site effluent is possible on the site but due to their preliminary nature do not make it clear whether on-site disposal would be suitable or sustainable for a specific number of lots.

Bushfire

The rezoning request identifies that the densely vegetated areas on the lot are mapped as Category 1 bushfire prone land. A small portion of Category 2 bushfire prone land associated with some scatted mature vegetation in the centre of the proposed rezoning area has also been mapped. The remainder of the site is mapped predominantly within a bushfire prone buffer

If supported, a planning proposal would need to be referred to the NSW RFS Commissioner for consideration under Section 9.1 Direction 4.4 Planning for Bushfire Protection.

A Bushfire Safety Authority Report supports the rezoning request (Attachment E5). It considers a 9-lot concept subdivision plan and confirms that subdivision and dwellings onsite can be consistent with the guidelines under Planning for Bushfire Protection 2006.

The existing uses, approved uses and likely future uses of land in the vicinity of the proposal.

The land uses surrounding the site include residential development and the escarpment area. The rezoning request seeks to apply the same zone and development controls which applies to the adjoining R5 zoned land. Land immediately to the east of the site has been approved for residential subdivision, indicating that new residential development in the area is a suitable land use and compatible with the existing and future intended land uses.

The services and infrastructure that are, or will be available, to meet the demands arising from the proposal and any proposed financial arrangements for infrastructure provision.

The site is currently not connected to Council's reticulated water or sewerage systems.

Despite conflicting messages in the supporting reports of the rezoning request it is understood that development on the site will not be connected to either system and will rely on water harvesting from roof area of each dwelling and onsite sewage management systems.

Telecommunication services are available to the site and all internal roads and driveways will be provided at the developer's costs.

It is considered that if development of the site is supported, there will not be any impact on the Council or State government for the provision of infrastructure.

3. COUNCIL VIEWS

Tweed Shire Council was asked for its comments on the rezoning review on 1 July 2020. Council replied to the request on 10 July 2020 (Attachment F6). Council does not support the rezoning of the subject land as presented in this rezoning request.

Council has been requested by the landowner to consider preparing a planning proposal for the rezoning of this site three times. Council has previously resolved (17 November 2016) to support a rezoning of the site conditional on development being limited to not more than two dwellings (Attachment F1). This resolution was consistent with a previous lapsed development consent from September 2002. The Department considered the resulting planning proposal on the basis of a 2-dwelling limit and issued the Gateway determination on 8 May 2017 (PP_2017_TWEED_003_01).

The proponent, not satisfied the planning proposal would meet their development goals for the site, requested Council to discontinue the proposal. This was done on 11 December 2017.

Another request to prepare a planning proposal was lodged with Council with additional information and an alternative lot layout. Council considered this request at its meeting in August 2019 and resolved not to support the new request and that the resolution of Council from 17 November 2016 stands (Attachment F2).

In February 2020 Council received its latest request to prepare a planning proposal for the rezoning of the land. Like before, the new application included additional information but no specific concept subdivision plan. Council considered this request at its meeting on 21 May 2020, including a submission from the proponent (Attachment F4) and resolved not to support the new request and that the resolution of Council from 17 November 2016 stands. Council notified the proponent on 25 May 2020 (Attachment F5).

The Council Report to the meeting on 21 May 2020 (Attachment F3) notes that Council has consistently resolved to protect the escarpment, which is a natural asset recognised as a defining feature of the Tweed and that in recent years there have been a number of enquiries and requests for residential development within or adjoining the escarpment, the cumulative impact of which, if approved, would likely have a significant impact on the Tweed's scenic landscape, apart from other potential impacts on local infrastructure.

ATTACHMENTS

Attachment A – Locality plan

Attachment B – Site plan

Attachment C – Current zonings

Attachment D – Proposed amendments to the LEP

Attachment E – Rezoning request

E1 - Cover letter

E2 - Application form

- E3 - Planning proposal application to TSC
- E4 - Draft planning proposal/Rezoning request
- E5 - Bushfire report
- E6 - Preliminary site investigation (Contamination assessment)
- E7 - Engineering report
- E8 - Flora and fauna review
- E9 - Onsite wastewater and rainwater review
- E10 - Onsite sewage management assessment report
- E11 - Preliminary geotechnical investigation
- E12 - Traffic impact assessment
- E13 - Visual impact assessment
- E14 - Visual impact assessment addendum
- E15 - Compliance issue correspondence with TSC

Attachment F – Council reports and correspondence

- F1 - Council report November 2016
- F2 - Council report August 2019
- F3 - Council report May 2020
- F4 - Proponent submission to Council Meeting May 2020
- F5 - Council notice of refusal May 2020
- F6 - Council response to Rezoning review

Attachment G – Previous Gateway determination

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