

Council Reference: PP12/0001  
Your Reference:



21 September 2016

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

tsc@tweed.nsw.gov.au  
[www.tweed.nsw.gov.au](http://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

The Secretary  
Department of Planning and Environment  
Locked Bag 9022  
**GRAFTON NSW 2460**

Attention: Director Regions, Northern

Dear Ms McNally

**Public Authority Submission on Planning Proposal 420-434  
Terranora Road, Terranora**

Thank you for the opportunity to review and comment on the Planning Proposal for Lots 2-8 DP 28597 420-434 Terranora Road, Terranora.

As you would be aware from the extensive consultation between Tweed Council and the Department, and following the meeting between the parties and the Department's Executive Director Regions, Mr Tim Hurst, on Wednesday 12 August 2015, the proposed site presents significant physical, infrastructure and planning constraints, and requires a considered assessment.

Tweed Council has previously provided significant information on the proposal. Much of this was generated through a detailed examination of the proposal between the period 2013/15. We now take this submission invitation to reiterate the key concerns as a matter of public interest, particularly in the following areas:

- infrastructure servicing, access and provision;
- land stabilisation; retaining wall reconstruction;
- s94 Contributions; and,
- scenic landscape values and impact.

**Tweed Council's Resolved Position**

At the ordinary meeting of Council on 5 November 2015 a planning business report was submitted that recommended proceeding to public exhibition with a proposal that encompassed residential use of the existing seven lots.

Council resolved unanimously not to proceed with a proposal that included residential use of the existing seven lots.

It was resolved inter alia to remove Lots 6, 7 & 8 from the rezoning, owing to a failure of the proposal to demonstrate that residential use of these lots would not have a significant adverse impact on the existing views from Terranora Road.

The Council's resolution was to exhibit the amended rezoning plan, concurrently with the exhibition of the s.93F Planning Agreement once final agreement on its terms had been resolved.

Please let us know should you require a further copy of the report.

In the meantime we trust this information will be of value to you in the consideration of the proposal.

### **Background**

The subdivision was created by Plan registration on 5 May 1958, and without the certification of the local Shire Clerk. For nearly 60 years seven of the eleven lots created have been regularly maintained, but have remained undeveloped and without residential status.

### **ISSUES AND OBJECTIONS**

1. Concept plans to be distinguished from development plans  
Tweed Council objects to the use of any concept plan, prepared in association with the planning proposal, being used as the basis for asserting a tacit approval by Council for any development.

#### ***Recommendation:***

Any concept plan be clearly marked as "concept only not for assessment or construction purposes" or suitably embellished with words to that affect.

2. Character of the locality, lot yield and configuration  
Notwithstanding the significant physical and infrastructure constraints affecting the site, the ability to accommodate development with a character typical of the locality has always been a known concern. The planning proposal has not addressed that concern.

The planning proposal should be supported with a 3D render of development envisaged so that the likely impact can be better understood.

#### ***Recommendation:***

That a character assessment and 3D render of a reasonable scale of building on each lot be prepared.

3. Visual Amenity and Scenic Impact Assessment  
Scenic impact and visual amenity has remained a key concern.

This is not a new issue or request of the proponent. By way of example Council's file records correspondence sent to the proponent which stated in part:

*"As per our site meeting of 15 April 2014, and subsequent correspondence it is imperative that the engineering diagrams accommodate not just potential building envelopes (which appear to have been merely located central to each allotment without any consideration of site constraints, or the practicability of construction or potential visual impact) but demonstrate the potential visual impact of buildings to*

*be constructed and the consequent impact on earthworks required to ensure that any built form does not adversely impact the visual amenity of the locality.*

*Until such time as we are in receipt of plans that clearly demonstrate the ability to construct houses on each proposed allotment, the visual impact of such construction, and the engineering implications of accommodating such construction we will not be in a position to undertake any further consideration of engineering plans provided.”, a Visual impact Assessment was presented to Council on 19 August 2014 which can be viewed in Attachment 1.*

A detailed response was provided to the proponent on 9 October 2014 which raised significant concerns with the assessment and discussed a number of other matters including lot number and configuration.

An assessment of the suitability of an adequate site responsive building density and height regulation is required.

### ***Recommendation***

An adequate visual impact assessment detailing potential impacts sufficient to permit an informed building height and density assessment should be prepared.

#### 4. Height of buildings

Maximum height of building is measured from existing ground level and consequently the actual height of a building on land can be significantly influenced by the extent of earthworks that occur prior to the ‘building’ development application being approved.

As documented this site requires substantial works to occur in advance and the actual finished surface levels are not certain. Whilst the proposed nine (9) metres building height might be seen as appropriate at the current land elevation it is not clear whether this will be the case after those works are completed. An AHD level may be a suitable planning response.

This is a critical issue as it relates to the impact the ultimate proposal may have on the scenic and character amenity in this locality.

### ***Recommendation***

As advanced at Point 2 above, a 3D render of the likely built form would greatly assist this evaluation.

#### 5. Access

Provision of a shared driveway is essential, and the works required to accommodate this are significant. It necessitates a coordinated construction response.

It is not clear how a ‘right of carriageway’ over existing land Titles will provide the security for those works being undertaken in advance of the lots being individually sold, or in the event they are sold how the timing and cost of works will be managed so that individual owners are not unnecessarily burdened with additional costs or by delay.

***Recommendation***

Further advice and detail on the proposed legal mechanism for securing the necessary works should be provided for comment.

6. Retaining wall

The geotechnical stability of the retaining wall is of concern and the structural failure of the existing wall / land within the central overland drainage line is noted.

The northern downslope retaining wall will be a substantial structure which, with required setbacks will, in conjunction with other easements for sewerage and stormwater, impose setbacks that further limit the north-south extent of potential development.

The wall will need to be demolished, and reconstructed to comply with Council's engineering standards, with geotechnical / engineering certification provided.

***Recommendation***

The planning proposal should be amended to acknowledge the significance of the retaining wall and the need for demolition of the existing wall and reconstruction in its entirety.

Further advice and detail on the proposed legal mechanism for securing the necessary works should be provided for comment.

7. Sewerage

The proponent has been advised that should a connection in Winchelsea Way be possible, a dual sewerage system **will** need to be constructed up front. When a connection within Area E becomes available the Winchelsea Way connection and pressure system is to be decommissioned.

The connection to Winchelsea Way requires establishing an easement over other private land(s).

Tweed Shire Council accepts no liability for the servicing of these lots, arising in association with the planning proposal.

***Recommendation***

Further advice and detail on the proposed legal mechanism for securing the necessary works / easements should be provided for comment.

8. Flooding

The land is subject to overland flooding from storm events and water crossing Terranora Road. This appears to have contributed to the failure of the retaining wall and erosion of the land.

***Recommendation***

Further advice and detail on the proposed legal mechanism for securing the necessary works should be provided for comment.

9. Role and need for a s93F Planning Agreement or 88E covenant

In acknowledgement of the need to ensure coordination in the provision of critical infrastructure across the entire site, the then Acting Executive Director, Regions advised Council on 4 September 2015 that:

*“The value of a Planning Agreement (PA) to confirm the responsibilities and requirements of the proponent was discussed at our meeting as appropriate to enable finalisation of the Planning Proposal.”*

It is unclear why covenants on the Lands' Titles is being proposed in place of a Planning Agreement and what affect this will have for the legal enforceability of ensuring all site and infrastructure work is adequately undertaken.

As monetary contributions are required as a result of the rezoning to permit residential use of the land the statutory mechanism for securing those is s.93F of the Act. This would satisfy the public purpose test under s.93F(2) and provide an appropriate legally enforceable agreement to ensure the coordinated and cost effective delivery of the infrastructure works or their decommissioning.

### **Recommendation**

Further advice and detail on the proposed legal mechanism for securing the necessary works should be provided for comment.

### **CONCLUSION**

The constraints on the development of this site are considerable and for the most part are neither insurmountable nor present an ultimate bar to the development of the land for a compatible land-use. The question is and has always been one of extent and suitability of development, an issue that remains vexed despite an apparent common thread linking the current number of lots with the difficulty of overcoming some of the critical issues identified and discussed above.

The visual and character impact of the proposal is real, it is the extent of that impact that is subjective and open to objective appraisal. The infrastructure constraints and site issues are substantial and will be very costly to provide and rectify. How the provision and maintenance of infrastructure will be legally secured is uncertain. These are the facts of this proposal.

The Department is requested to address these most serious concerns and to provide Council with the additional advice requested.

Should you wish to discuss any of the matters raised in this submission please do not hesitate to contact Iain Lonsdale, Unit Coordinator Strategic Planning and Urban Design on (02) 6670 2457, or at [ilonsdale@tweed.nsw.gov.au](mailto:ilonsdale@tweed.nsw.gov.au).

Yours faithfully



**Vince Connell**  
**DIRECTOR PLANNING & REGULATION**

