



**TWEED**  
SHIRE COUNCIL

**Mayor:** Cr K Milne

**Councillors:** P Allsop  
R Byrnes  
C Cherry (Deputy Mayor)  
R Cooper  
J Owen  
W Polglase

# Agenda

## **Planning Committee Meeting Thursday 3 October 2019**

held at  
**Harvard Room, Tweed Heads Administration Building, Brett Street, Tweed Heads**  
commencing at 5.30pm

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 - Section 4.15 Evaluation

(1) **Matters for consideration—general**

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

- (a) the provisions of:
  - (i) any environmental planning instrument, and
  - (ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and
  - (iii) any development control plan, and
  - (iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and
  - (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and
  - (v) any coastal zone management plan (within the meaning of the *Coastal Protection Act 1979*),that apply to the land to which the development application relates,
- (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,
- (c) the suitability of the site for the development,
- (d) any submissions made in accordance with this Act or the regulations, (e) the public interest.

**Note.** See section 75P(2)(a) for circumstances in which determination of development application to be generally consistent with approved concept plan for a project under Part 3A.

(2) **Compliance with non-discretionary development standards—development other than complying development.**

If an environmental planning instrument or a regulation contains non-discretionary development standards and development, not being complying development, the subject of a development application complies with those standards, the consent authority:

- (a) is not entitled to take those standards into further consideration in determining the development application, and
- (b) must not refuse the application on the ground that the development does not comply with those standards, and
- (c) must not impose a condition of consent that has the same, or substantially the same, effect as those standards but is more onerous than those standards,

and the discretion of the consent authority under this section and section 4.16 is limited accordingly.

(3) If an environmental planning instrument or a regulation contains non-discretionary development standards and development the subject of a development application does not comply with those standards:

- (a) subsection (2) does not apply and the discretion of the consent authority under this section and section 4.16 is not limited as referred to in that subsection, and
- (b) a provision of an environmental planning instrument that allows flexibility in the application of a development standard may be applied to the non-discretionary development standard.

**Note.** The application of non-discretionary development standards to complying development is dealt with in section 4.28 (3) and (4).

(3A) **Development control plans**

If a development control plan contains provisions that relate to the development that is the subject of a development application, the consent authority:

- (a) if those provisions set standards with respect to an aspect of the development and the development application complies with those standards—is not to require more onerous standards with respect to that aspect of the development, and
- (b) if those provisions set standards with respect to an aspect of the development and the development application does not comply with those standards—is to be flexible in applying those provisions and allow reasonable alternative solutions that achieve the objects of those standards for dealing with that aspect of the development, and
- (c) may consider those provisions only in connection with the assessment of that development application.

In this subsection, **standards** include performance criteria.

(4) **Consent where an accreditation is in force**

A consent authority must not refuse to grant consent to development on the ground that any building product or system relating to the development does not comply with a requirement of the *Building Code of Australia* if the building product or system is accredited in respect of that requirement in accordance with the regulations.

- (5) A consent authority and an employee of a consent authority do not incur any liability as a consequence of acting in accordance with subsection (4).

(6) **Definitions**

In this section:

- (a) reference to development extends to include a reference to the building, work, use or land proposed to be erected, carried out, undertaken or subdivided, respectively, pursuant to the grant of consent to a development application, and
- (b) **non-discretionary development standards** means development standards that are identified in an environmental planning instrument or a regulation as non-discretionary development standards.

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## Items for Consideration of the Planning Committee:

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## REPORTS THROUGH THE GENERAL MANAGER

### REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

- 1 [PR-PC] Development Application DA19/0371 for a Two Lot Boundary Adjustment at Lot 2 DP 850714, No. 1289 Kyogle Road and Lot 92 DP 807666, No. 1317 Kyogle Road Uki

**SUBMITTED BY:** Development Assessment and Compliance

mhm



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#### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 2 Making decisions with you
- 2.1 Built Environment
- 2.1.2 Development Assessment - To assess development applications lodged with Council to achieve quality land use outcomes and to assist people to understand the development process.

**ROLE:** **Provider**

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#### SUMMARY OF REPORT:

Consent is sought for a two lot boundary adjustment between two rural zones lots. The purpose of the boundary adjustment is to facilitate the acquisition of land to enable the continuation of current grazing activities.

The lots that are the subject of the boundary adjustment are as follows:

Subject lots	Current size	Proposed	% change
Lot 2 DP 850714	14.38ha	Lot 20 - 2.072ha	85.6% decrease
Lot 92 DP 807666	2.072ha	Lot 21 - 14.38ha	694% increase

The application is being made with respect to Clause 4.1C of the Tweed Local Environmental Plan 2014 which permits boundary adjustments between 2 or more lots where one or more of the resulting lots would be less than the prescribed 40ha minimum lot size.

Subsequent to accepting the application for lodgement, Council received legal advice pertaining to the interpretation of the term 'boundary adjustment' under Clause 4.1C in relation to another application. The legal advice indicated that any application for a boundary adjustment should relate to a minor alteration to boundaries and lot configuration.

Having regard to the legal advice received in relation to the meaning of a 'boundary adjustment' and the interpretation of Clause 4.1C of the Tweed Local Environment Plan 2014

(TLEP2014), it is considered that the proposal cannot be considered a boundary adjustment due to the significant variation in lot size and configuration from the original lots.

At the Council Meeting of 1 August 2019, Council considered a separate development application seeking approval pursuant to Clause 4.1C and the following Decision was made in relation to other applications seeking approval under Clause 4.1C:

3. *Assess any DA's for Boundary adjustments that have already been accepted by Council before 01/08/19 on the interpretation of Clause 4.1(C)3 on their merits and using the interpretation publicly known at the time of their submission*

This development application DA19/0371 was lodged prior to 01/08/19 and as such this application is being referred to Council for determination.

This report has regard for the previous legal advice received in relation to Clause 4.1C and therefore recommends refusal of the application as it is considered that the proposal does not comply with Clause 4.1C.

Regardless of the application's non-permissibility under Clause 4.1C of the TLEP2014, the proposal is not considered to result in any unacceptable environmental impacts on the natural or built environment. The proposal is considered to be generally acceptable with regard to relevant State Environmental Planning Policies and the Tweed Development Control Plan 2008.

The report includes a full assessment of the proposal with regard to matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979.

#### **RECOMMENDATION:**

**That:**

1. **Development Application DA19/0371 for a two lot boundary adjustment at Lot 2 DP 850714 No. 1289 Kyogle Road, Uki; Lot 92 DP 807666 No. 1317 Kyogle Road, Uki be refused for the following reason:**
  1. **The development does not constitute a boundary adjustment under the provisions of Clause 4.1C of the Tweed Local Environment Plan 2014 and is therefore not permissible.**
2. **ATTACHMENT 2 is CONFIDENTIAL in accordance with Section 10A(2)(d) of the Local Government Act 1993, because it contains:-**
  - (g) **advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.**

**REPORT:**

**Applicant:** Mr IR Arnold and Mrs JL Arnold  
**Owner:** Mr Ivan R Arnold & Mrs Judith L Arnold  
**Location:** Lot 2 DP 850714; No. 1289 Kyogle Road and Lot 92 DP 807666; No. 1317 Kyogle Road Uki  
**Zoning:** RU2 Rural Landscape  
**Cost:** Nil

**Background**

Consent is sought for a two lot boundary adjustment between two rural zones lots. The applicant has stated that the purpose of the boundary adjustment is to transfer 12.3ha of grazing land between family members. The owners of Lot 2 are unable to appropriately manage the land due to ill health and wish to transfer a portion of their land to their son on the neighbouring lot. The subject land will continue to be used for grazing purposes and no vegetation removal is proposed to facilitate the proposal.

The lots that are the subject of the boundary adjustment are as follows:

Subject lots	Current size	Proposed	% change
Lot 2 DP 850714	14.38ha	Lot 20 - 2.072ha	85.6% decrease
Lot 92 DP 807666	2.072ha	Lot 21 - 14.38ha	694% increase

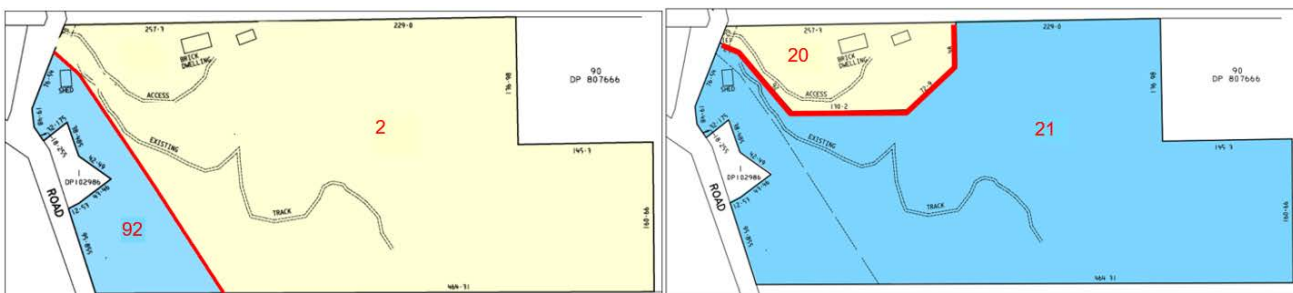


Figure 1 Current and proposed lot boundary (in red) and lot layout

This application is seeking approval under the provisions of Clause 4.1C Exceptions to minimum subdivision lot size for boundary adjustments of the Tweed Local Environment Plan 2014 (TLEP):

**4.1C Exceptions to minimum subdivision lot size for boundary adjustments**

- (1) *The objective of this clause is to permit boundary adjustments between 2 or more lots where one or more of the resulting lots would be less than the minimum lot size shown on the Lot Size Map in relation to that land.*
- (2) *This clause applies to land in the following zones:*
  - (a) *Zone RU1 Primary Production,*
  - (b) *Zone RU2 Rural Landscape,*
  - (c) *Zone R5 Large Lot Residential.*
- (3) *Despite clause 4.1, development consent may be granted for the subdivision of land by way of an adjustment of boundaries between adjoining lots where the size*



of one or more of the lots resulting from the subdivision would be less than the minimum lot size shown on the Lot Size Map in relation to the land if the consent authority is satisfied that the subdivision will not result in:

- (a) an increase in the number of lots, or
  - (b) an increase in the number of dwellings or opportunities for dwellings on each lot, or
  - (c) an increase in the possibility of land use conflict, or
  - (d) an adverse impact on the environmental values or agricultural viability of the land.
- (4) In determining whether to grant development consent for the subdivision of land under this clause, the consent authority must consider the following:
- (a) the existing uses and approved uses of other land in the vicinity of the subdivision,
  - (b) whether or not the subdivision is likely to have a significant impact on land uses that are likely to be preferred and the predominant land uses in the vicinity of the development,
  - (c) whether or not the subdivision is likely to be incompatible with a use referred to in paragraph (a) or (b),
  - (d) whether or not the subdivision is likely to be incompatible with a use of land in any adjoining zone,
  - (e) any measures proposed by the applicant to avoid or minimise any incompatibility referred to in paragraph (c) or (d),
  - (f) whether or not the subdivision is appropriate having regard to the natural and physical constraints affecting the land.
- (5) This clause does not apply in relation to a subdivision under the *Community Land Development Act 1989* or the *Strata Schemes Development Act 2015*.

With respect to the objectives of this Clause under item (1) above, it is noted that the minimum lot size applicable to the site is 40ha and each of the subject lots is currently less than the minimum lot size at 14.38ha and 2.072 ha. The proposal will result in each of the subject lots remaining less than the minimum lot size.

Council recently sought legal advice with regard to the to the meaning of the term *boundary adjustment* with respect to the application of Clause 4.6 in relation to another boundary adjustment application submitted to Council (DA19/0265). It is noted that the term *boundary adjustment* is not defined in the Environmental Planning and Assessment Act 1979 or the Standard Instrument.

Legal advice was subsequently received that determined that any assessment of a boundary adjustment between lots under Clause 4.1C should consider the meaning of the term *adjustment*. The term *adjustment* implies that any alteration of boundaries should be minor in extent with regard to the repositioned boundary and the existing and resultant lot size and shape.

This reasoning is supported by NSW Land and Environment Court decisions which have determined that *boundary adjustments* are considered to be minor adjustments to boundaries and should not result in wholesale changes to the overall lot configuration. The case of *Johnson v Coffs Harbour City Council* [2018] NSWLEC 1094 relates to a proposed boundary

adjustment in which the Commissioner considers the meaning of the terms “adjusting the boundary” and “boundary adjustment”. The Commissioner reviewed previous cases in which the term boundary adjustment is considered and noted that:

- Adjusting means something that is slight or marginal;
- The meaning of “adjusting” depends on the degree of alteration that is sought in the context of the site as a whole; and
- “Boundary adjustment” does not encompass any and all alterations of a boundary and resulting parcels should bear some resemblance of the lots which existed prior to the boundary adjustment.

A copy of the *Johnson v Coffs Harbour City Council* [2018] NSWLEC 1094 is attached to this report as it includes a comprehensive review of previous cases in which the meaning of the phrase “boundary adjustment” is considered.

With regard to the context of the site as a whole, the land affected by the proposal represents 74.8% (12.3ha) of the total site area of both lots (16.45ha). This cannot be considered a minor adjustment and each of the lots is substantially altered in size.

The resultant configuration of the proposed new lot layout is substantially different to the original lot layout and cannot be considered to be a *minor* adjustment as indicated by the legal interpretation of the clause.

Accordingly, with consideration for recent legal advice received regarding the interpretation of Clause 4.1C, and the meaning of the term boundary adjustment as considered by previous Land and Environment Court cases, the proposal is not considered to meet the test of a *boundary adjustment* as per the provisions of Clause 4.1C.

Council considered the legal advice received in regard to Clause 4.1C with respect to DA19/0265 at the Council Meeting of 1 August 2019. The Decision of Council included the following item:

3. *Assess any DA's for Boundary adjustments that have already been accepted by Council before 01/08/19 on the interpretation of Clause 4.1(C)3 on their merits and using the interpretation publicly known at the time of their submission*

This development application DA19/0371 was lodged 31 May 2019 prior to receipt of the legal advice received 2 July 2019 and prior to the above Decision of Council.

As such this application is being referred to Council for determination.

This report has regard to the legal advice received in relation to Clause 4.1C and therefore recommends refusal of the application as it is considered that the proposal does not comply with Clause 4.1C.

The remainder of the report includes a full assessment of the proposal with regard to matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979.

## Site Description

The subject lots comprise of cleared grazing land with stands of mature vegetation adjacent to Kyogle Road and along the southern boundary of current Lot 2 (14.38ha). Aerial imagery suggests the land has been used for grazing for approximately 50yrs.

The land is undulating varying in height from RL 15m AHD to RL 85m AHD on the south eastern portion of current Lot 2. The land contains some ephemeral low order streams and farm tracks.

Lot 2 is 14.38 ha and has a dwelling entitlement. The site contains an approved house and telecommunications pole. A farm shed is also located on the property adjacent to the dwelling house. The site is used for cattle grazing.

Lot 92 is 2.072ha and has a dwelling entitlement. The site contains an approved dwelling, ancillary studio and a farm shed. The site is used primarily for rural residential purposes.

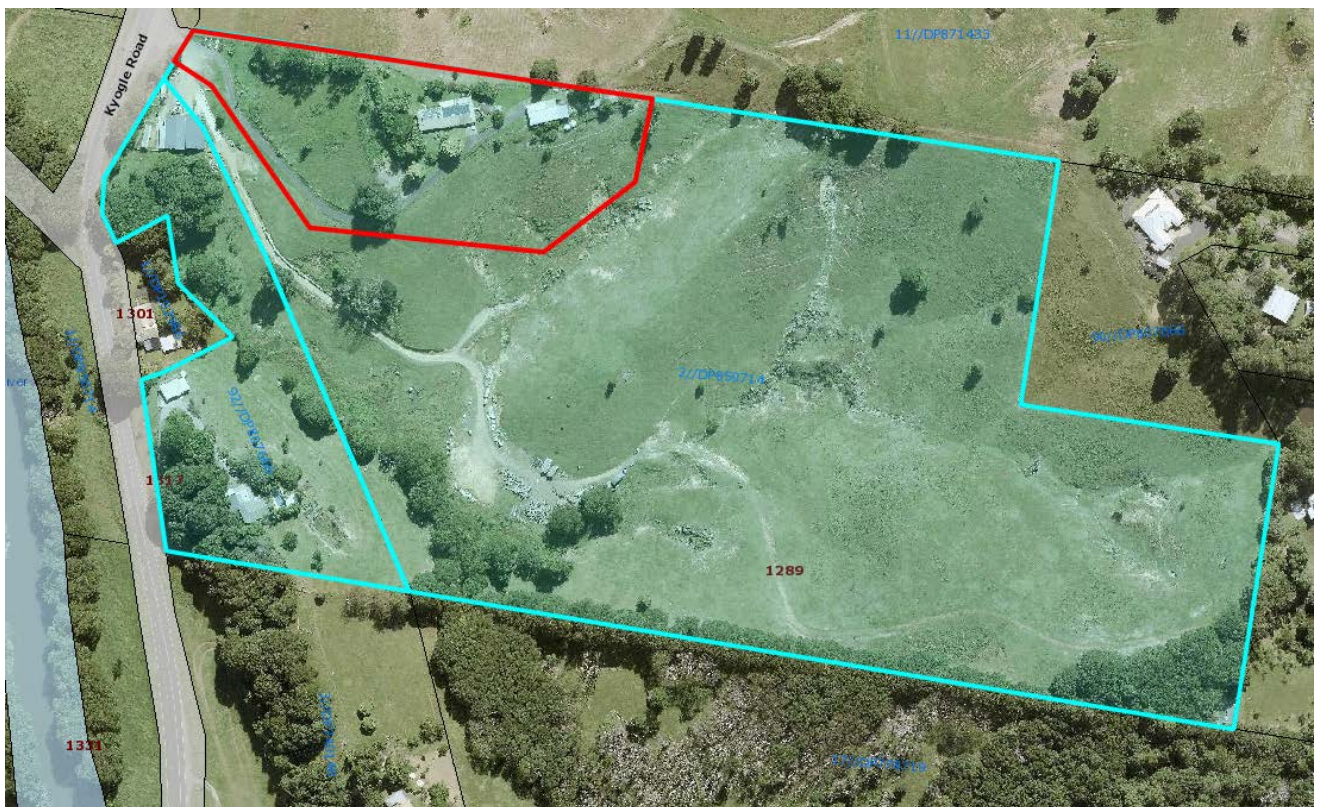
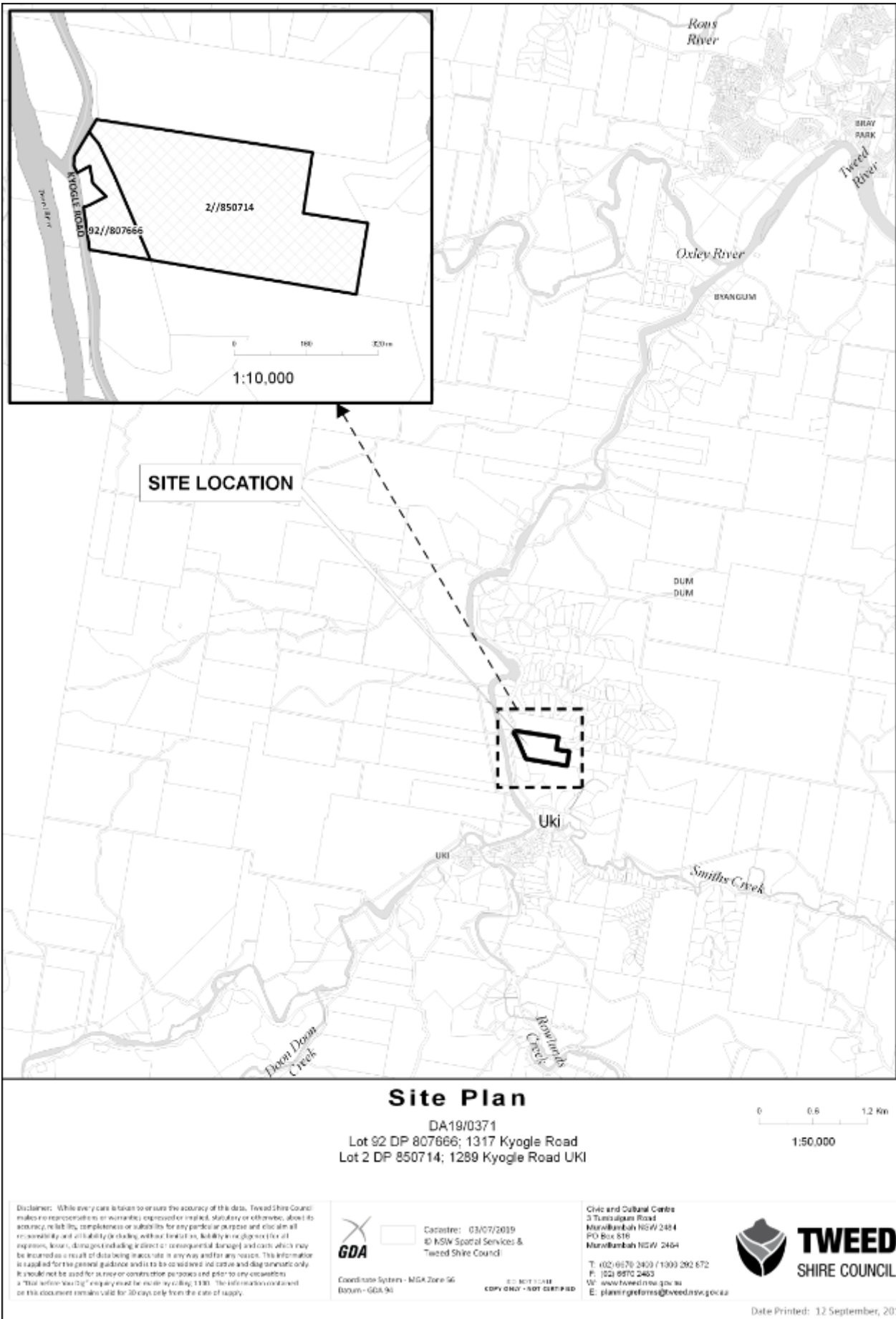


Figure 2 Subject lots with the proposed boundary shown in red.

The subject lots are mapped as bushfire prone and are within the Drinking Water Catchment Area. Lot 92 (2.072ha) is partially mapped as being potentially flood affected from the Clarrie Hall Dam and a small portion of the lot (11%) is identified as being Regionally Significant Non-Contiguous Farmland under the Farmland Protection Project. Each of the lots have frontage to Kyogle Road which is a Classified Main Road.

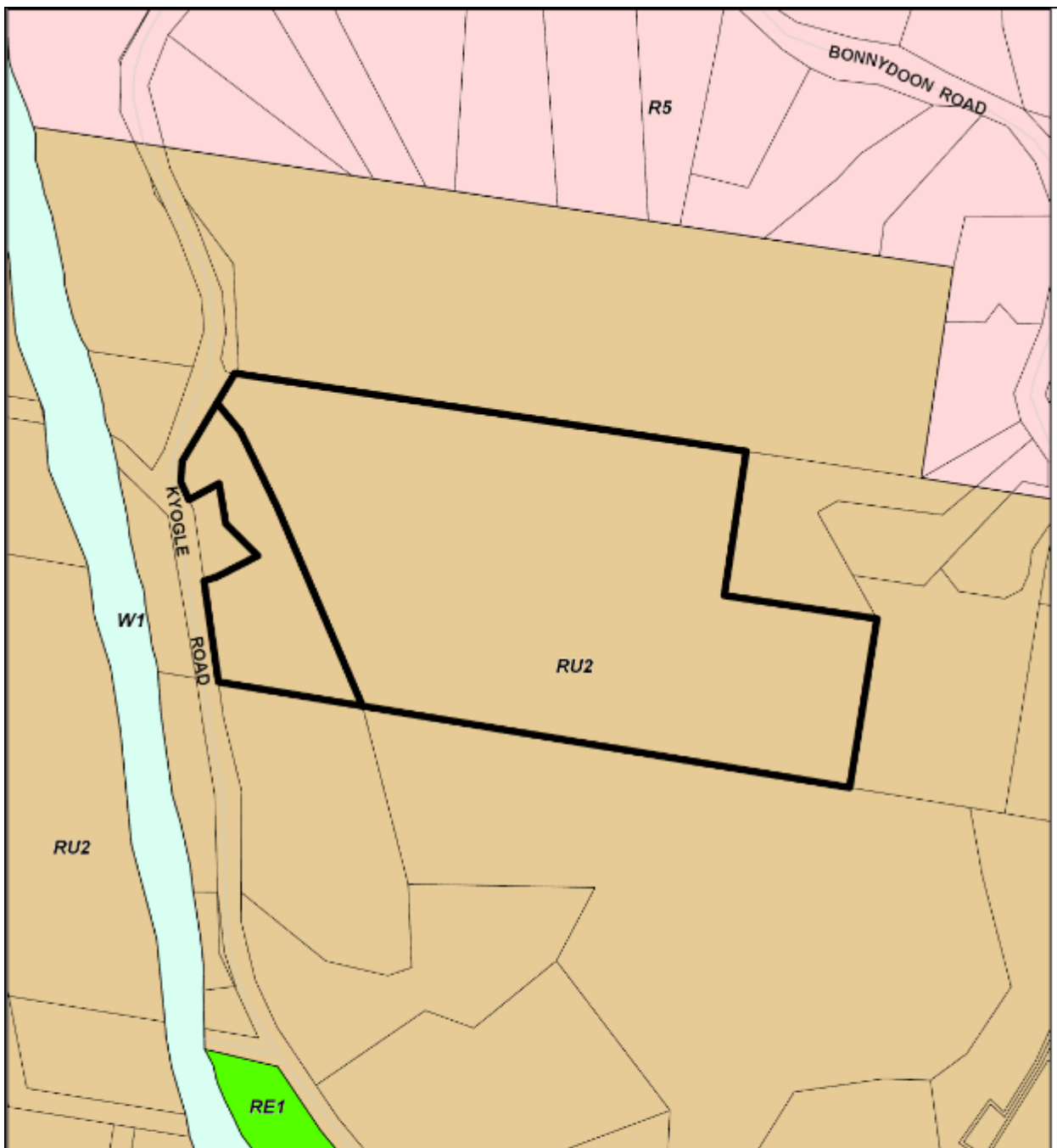
The application has been reviewed by Council's Environmental Health and Development Engineering Units who raised no objections to the proposal.

**SITE DIAGRAM**





**ZONE MAP**



- |              |                                     |                       |                   |
|--------------|-------------------------------------|-----------------------|-------------------|
| Subject Land | Tweed Local Environmental Plan 2014 | RU2                   | Rural Landscape   |
| Subject Land | R5                                  | Large Lot Residential | W1                |
|              | RE1                                 | Public Recreation     | Natural Waterways |



**Site Plan - Local Environmental Plan**

DA19/0371  
 Lot 92 DP 807666; 1317 Kyogle Road  
 Lot 2 DP 850714; 1289 Kyogle Road UKI

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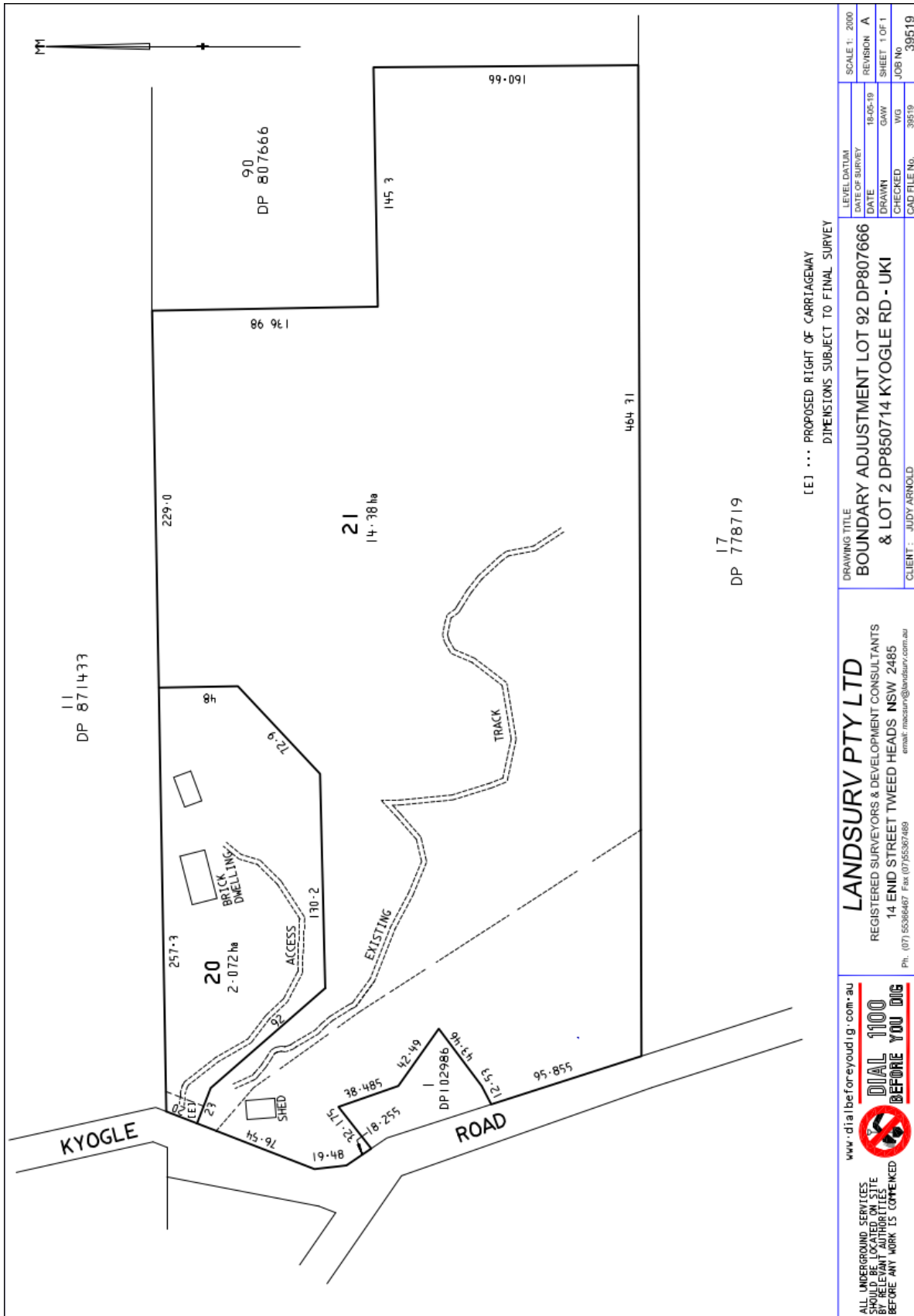
Date Printed: 17 September 2019

**AERIAL IMAGERY**



<p>1:5,000 @ A4 Portrait 0 50 100 m</p> <p>Source: GDA GDA 1994 MGA 94 Map Projections: Universal Transverse Mercator Vertical Datum: Geoidetic Datum of Australia 2004 GDA 1994 MGA 94 GDA 1994 MGA 94</p>	<p>Civil and Cultural Centre 5 Tindbergen Road Murwillumbah NSW 2484 Ph: 02 6620 3115 M: 02 6620 3115</p> <p><b>TWEED</b> 02 6620 3115</p> <p>T: (02) 6620 3400 (02) 6620 3400 F: (02) 6620 3425 E: <a href="mailto:community@tweed.nsw.gov.au">community@tweed.nsw.gov.au</a> E: <a href="mailto:planning@tweed.nsw.gov.au">planning@tweed.nsw.gov.au</a></p>	<p><b>Aerial Photography April 2018</b></p> <p>DA19/0371 Lot 92 DP 807666; 1317 Kyogle Road Lot 2 DP 850714; 1289 Kyogle Road UKI</p>	<p>© 2018 Imagery - Tweed Shire Council © Cadastra - Tweed Shire Council <i>Boundaries shown should be considered approximate only.</i></p>
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DEVELOPMENT PLAN



LEVEL/DATUM	SCALE 1: 2000
DATE OF SURVEY	REVISION A
DATE	18-05-19
DRAWN	GAW
CHECKED	WG
CAD FILE No.	39519
	JOB No
	39519

DRAWING TITLE  
**BOUNDARY ADJUSTMENT LOT 92 DP807666 & LOT 2 DP850714 KYOGLE RD - UKI**  
 CLIENT: JUDY ARNOLD

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**Considerations under Section 4.15 of the Environmental Planning and Assessment Act 1979:**

**(a) (i) The provisions of any environmental planning instrument**

**Tweed Local Environmental Plan 2014**

Clause 1.2 – Aims of the Plan

This Plan aims to make local environmental planning provisions for land in Tweed in accordance with the relevant standard environmental planning instrument under section 33A of the Act.

The particular aims of this Plan are as follows:

- (a) *to give effect to the desired outcomes, strategic principles, policies and actions contained in the Council's adopted strategic planning documents, including, but not limited to, consistency with local indigenous cultural values, and the national and international significance of the Tweed Caldera,*
- (b) *to encourage a sustainable local economy and small business, employment, agriculture, affordable housing, recreational, arts, social, cultural, tourism and sustainable industry opportunities appropriate to Tweed,*
- (c) *to promote the responsible sustainable management and conservation of Tweed's natural and environmentally sensitive areas and waterways, visual amenity and scenic routes, built environment, and cultural heritage,*
- (d) *to promote development that is consistent with the principles of ecologically sustainable development and to implement appropriate action on climate change,*
- (e) *to promote building design which considers food security, water conservation, energy efficiency and waste reduction,*
- (f) *to promote the sustainable use of natural resources and facilitate the transition from fossil fuels to renewable energy,*
- (g) *to conserve or enhance the biological diversity, scenic quality and geological and ecological integrity of Tweed,*
- (h) *to promote the management and appropriate use of land that is contiguous to or interdependent on land declared a World Heritage site under the Convention Concerning the Protection of World Cultural and Natural Heritage, and to protect or enhance the environmental significance of that land,*
- (i) *to conserve or enhance areas of defined high ecological value,*
- (j) *to provide special protection and suitable habitat for the recovery of the Tweed coastal Koala.*

The proposed boundary adjustment relates to rural land used for agricultural purposes. The plan aims to, among other things, encourage a sustainable local economy and agriculture. In this respect, the proposal is consistent with the aims of the plan.



Clause 2.3 – Zone objectives and Land use table

The subject lots are zoned RU2 Rural Landscape and the objectives the zone are as follows:

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To maintain the rural landscape character of the land.*
- *To provide for a range of compatible land uses, including extensive agriculture.*
- *To provide for a range of tourist and visitor accommodation-based land uses, including agri-tourism, eco-tourism and any other like tourism that is linked to an environmental, agricultural or rural industry use of the land.*

The purpose of the proposal is to enable the subject land to be used for grazing purposes. No works are proposed and as such the proposal will not impact on the existing rural landscape character of the land. The proposal is therefore considered to be consistent with the objectives of the zone.

Clause 4.1 to 4.2A - Principal Development Standards (Subdivision)

The application is seeking a boundary adjustment under Clause 4.1C Exceptions to minimum subdivision lot size for boundary adjustments. Consideration of the application of Clause 4.1C to the proposed alteration of the boundary is provided in an earlier section of this report with respect to recent legal advice received regarding the interpretation of the term '*boundary adjustment*'.

To reiterate, the proposal cannot be considered to be a boundary adjustment pursuant to Clause 4.1C as the term '*adjustment*' indicates something that is *minor* in its extent. The proposal is not considered to be a minor alteration of boundaries as resultant lots vary substantially in size and configuration from the original lots. Current Lot 92 will increase by 694% and current Lot 21 will decrease by 85.6%.

Irrespective of the recent legal interpretation of the term 'boundary adjustment', the proposal is considered to be compliant with the provisions of Clause 4.1C as detailed below:

- (3) *Despite clause 4.1, development consent may be granted for the subdivision of land by way of an adjustment of boundaries between adjoining lots where the size of one or more of the lots resulting from the subdivision would be less than the minimum lot size shown on the Lot Size Map in relation to the land if the consent authority is satisfied that the subdivision will not result in:*
  - (a) *an increase in the number of lots, or*

The proposal will not result in an increase in the number of lots. The proposal relates to a boundary adjustment between two adjoining lots and no new lots are created.

- (b) *an increase in the number of dwellings or opportunities for dwellings on each lot, or*

No new lots will be created and no opportunities for additional dwelling is created by the proposal. Each of the current lots has a dwelling entitlement and each of the lots resulting from the proposal will be below the minimum lot size of 40ha which prevents further subdivision to create additional lots with a dwelling entitlement.

- (c) *an increase in the possibility of land use conflict, or*

No changes to current land uses are proposed. Current Lot 92 (2.072ha) contains a dwelling, studio and farm shed and is currently used primarily for rural living purposes. Current Lot 2 contains a dwelling and farm shed and is used for rural living purposes and cattle grazing. The purpose of the proposal is to transfer 12.308ha from Lot 2 to Lot 92 so that the land is able to be appropriately managed by the property owners.

Proposed new Lot 20 (2.072ha<sup>2</sup>) will contain a single dwelling and is of sufficient size and dimensions to provide appropriate buffers to agricultural activities (grazing) on the adjacent lot. The existing dwelling is located approximately 63m from the proposed new lot boundary. As such it is considered that the proposal is unlikely to increase the possibility of land use conflict.

- (d) *an adverse impact on the environmental values or agricultural viability of the land.*

The proposal unlikely to result in adverse impacts the environmental values of the land and no changes to the current uses are proposed. The portion of land to be essentially transferred from existing Lot 2 to new Lot 21 will continued to be used for cattle grazing.

- (4) *In determining whether to grant development consent for the subdivision of land under this clause, the consent authority must consider the following:*

- (a) *the existing uses and approved uses of other land in the vicinity of the subdivision,*

The site is currently utilised for rural living and grazing purposes. Land in the vicinity of the subject site is utilized primarily for agricultural and rural residential purposes. Rural lots in the locality range in size from 57ha to 2798m<sup>2</sup>.

- (b) *whether or not the subdivision is likely to have a significant impact on land uses that are likely to be preferred and the predominant land uses in the vicinity of the development,*

The predominant land use within the locality is agricultural and rural residential uses. The proposal is unlikely to have a significant impact on adjacent agricultural and rural residential uses in the locality as is it noted that not changes to land uses are proposed.

- (c) *whether or not the subdivision is likely to be incompatible with a use referred to in paragraph (a) or (b),*

The proposal is not incompatible with the existing or future agricultural and rural residential uses of the locality.

- (d) *whether or not the subdivision is likely to be incompatible with a use of land in any adjoining zone,*

The subject lots are zoned RU2 Rural Landscape and do not adjoin any other zone. The proposal will not impact land zoned R5 Large Lot Residential 200m north of the site.

- (e) *any measures proposed by the applicant to avoid or minimise any incompatibility referred to in paragraph (c) or (d),*

No incompatibility is anticipated.

- (f) *whether or not the subdivision is appropriate having regard to the natural and physical constraints affecting the land.*

The current boundary traverses land ranging in elevation from approximately RL 25m AHD to RL 15m AHD. The proposed new boundary alignment generally follows the contour of the land with new Lot 20 generally contained to land above the RL 30m AHD contour line. The proposed re-aligned boundary is unlikely to result in any detrimental impact to the natural or physical environment.

As such it is considered that the proposal is appropriate with regard to the physical constraints of the land.

#### Clause 4.3 - Height of Buildings

Not applicable as no buildings/dwellings are proposed.

#### Clause 4.4 – Floor Space Ratio

Not applicable as no buildings/dwellings are proposed.

#### Clause 4.6 - Exception to development standards

No exceptions to development standards are proposed.

#### Clause 5.4 - Controls relating to miscellaneous permissible uses

Not applicable as this application relates to a boundary adjustment only.

#### Clause 5.5 – Development within the Coastal Zone

Not applicable as the site is not located in the Coastal Zone.

Clause 5.10 - Heritage Conservation

The subject site is not within a Heritage Conservation Area nominated under this plan. The site is not identified on mapping under the Aboriginal Cultural Heritage Management Plan (ACHMP).

No works are proposed and as such it is considered unlikely the proposal will impact European or Aboriginal Cultural Heritage items.

Clause 5.11 - Bush fire hazard reduction

The site is mapped as bushfire prone. The proposal does not affect the provisions of this clause. A full assessment of suitability of the proposal with regard to the bushfire hazard of the land is provided in a later section of this report.

Clause 7.1 – Acid Sulfate Soils

The site mapped as not mapped as being affected by Acid Sulfate Soils.

Clause 7.2 - Earthworks

The application relates to a subdivision in which no works are proposed. As such the proposal is considered to be compliant with the provisions of this clause.

Clause 7.3 – Flood Planning

A portion of current Lot 92 is mapped as being affected by possible flooding from the Clarrie Hall Dam. The proposed altered lot boundary is not on land that is mapped as being flood affected. The proposal will not adversely flood behaviour or result in an increase of any adverse effects of flooding. The proposal is considered compliant with the provisions of this clause.



Clause 7.4 - Floodplain risk management

Not applicable and the subject site is not on land to which this clause is applicable.

Clause 7.5 - Coastal risk planning

Not applicable as the site is not identified on the Coastal Risk Planning map.

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Clause 7.6 - Stormwater Management

Not applicable as this clause relates to stormwater management in urban zones.

Clause 7.7 - Drinking Water Catchments

The subject land is located within the Drinking Water Catchment Area. No change in land use is proposed by this application and the development is unlikely to have any adverse impact on the quality and quantity of water entering the drinking water storage. The proposal is compliant with the provisions of this clause.

Clause 7.8 – Airspace operations

The site is not mapped as being affected by airspace operations.

Clause 7.9 - Development in areas subject to aircraft noise

Not applicable as the site is not mapped as being subject to aircraft noise.

Clause 7.10 - Essential Services

The site is not connected to Council's water or sewerage infrastructure.

The applicant has not provided an on-site sewage management land capability assessment report or any supporting information discussing the suitability of the proposed Lots for on-site sewage management. However it is considered that each of the proposed lots are of a size that is capable of accommodating appropriate onsite sewerage management systems.

No changes to existing telecommunications and electricity services are required.

Existing access to each of the dwellings is to remain unchanged and is considered to be suitable.

**North Coast Regional Plan 2036 (NCRP)**

The North Coast Regional Plan 2036 is the key strategic planning strategy that sets the intended direction for growth and development on the North Coast over the next 30 years. The NCRP sets out four primary Goals and associated Directions and Actions to achieve those goals.

Direction 11: *Protect and enhance productive agricultural lands* is applicable to the proposal as the site is partially identified as Regionally Significant Farmland through the Northern Rivers Farmland Protection Project 2005 as referenced with in this Direction. Action 11.2 of the NCRP proposes to update the Northern Rivers Farmland Protection Project 2005 and includes interim criteria for the assessment of any non-agricultural uses of land identified as important farmland within Appendix B.

This application does not propose any change of use of land mapped as Regionally Significant Farmland and accordingly is considered to be not inconsistent with the strategic intent of the North Coast Regional Plan.

### **State Environmental Planning Policies**

#### **SEPP No. 44 - Koala Habitat Protection**

This policy applies to land in relation to which a development application has been made that has an area of more than 1 hectare and as such is applicable to the proposal. The aims and objectives of SEPP 44 are set in clause 3 as follows:

#### **3 Aims, objectives etc**

*This Policy aims to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas to ensure a permanent free-living population over their present range and reverse the current trend of koala population decline:*

- (a) by requiring the preparation of plans of management before development consent can be granted in relation to areas of core koala habitat, and*
- (b) by encouraging the identification of areas of core koala habitat, and*
- (c) by encouraging the inclusion of areas of core koala habitat in environment protection zones.*

Prior to the issue of any consent for a development application, Council must consider if the land to which the application relates is potential or core koala habitat.

The land has been historically cleared and aerial imagery suggests that the land has been used for grazing for at least 50 years. Council's vegetation mapping does not indicate that the site supports primary koala habitat. The land is not considered to be potential or core koala habitat and as such a plan of management is not required for the proposal.

#### **SEPP No. 55 - Remediation of Land**

The objectives of SEPP No. 55 is to provide a State wide planning approach to the remediation of contaminated land and to require that remediation works meet certain standards and conditions.

SEPP No. 55 requires a consent authority to consider whether land is contaminated and if contaminated, that it would be satisfied that the land is suitable, in its contaminated state (or will be suitable after remediation). Further, it advises that if the land is contaminated and requires remediation, that the consent authority is satisfied that the land will be remediated before the land is used for that purpose. In particular it is noted that this SEPP states that a consent authority must not consent to the carrying out of any development on land unless:

- (a) it has considered whether the land is contaminated, and*
- (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*

- (c) *if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

No change to the current cattle grazing and rural residential activities are proposed. Council's Environmental Health Unit have reviewed that application and conducted a desk top analysis of potential contamination of the site. No evidence of potential contamination was uncovered and it is considered that no further investigation is warranted with regard to potential contamination of the site.

It is considered that the site is suitable for the continued agricultural and rural residential purposes with regard to potential contamination of the site and the provisions of this SEPP have been satisfied.

#### SEPP (Infrastructure) 2007

The current and proposed lots each have frontage to Kyogle Road which is a classified main road. As such Clause 101 of the Infrastructure SEPP is applicable to the proposal which states:

#### **101 Development with frontage to classified road**

- (1) *The objectives of this clause are:*
- (a) *to ensure that new development does not compromise the effective and ongoing operation and function of classified roads, and*
  - (b) *to prevent or reduce the potential impact of traffic noise and vehicle emission on development adjacent to classified roads.*
- (2) *The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:*
- (a) *where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and*
  - (b) *the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:*
    - (i) *the design of the vehicular access to the land, or*
    - (ii) *the emission of smoke or dust from the development, or*
    - (iii) *the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*
  - (c) *the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

The proposal relates to a subdivision of land with no change in land use and as such the proposal does not relate to a noise sensitive development. No changes to existing access is proposed which is considered to be acceptable. The development will not compromise the ongoing operation of the classified road. The proposal is considered to be compliant with the provisions of this SEPP.

SEPP (Primary Production and Rural Development) 2019

The aims of this policy are set out in Clause 3 and are as follows:

- (a) *to facilitate the orderly economic use and development of lands for primary production,*
- (b) *to reduce land use conflict and sterilisation of rural land by balancing primary production, residential development and the protection of native vegetation, biodiversity and water resources,*
- (c) *to identify State significant agricultural land for the purpose of ensuring the ongoing viability of agriculture on that land, having regard to social, economic and environmental considerations,*
- (d) *to simplify the regulatory process for smaller-scale low risk artificial waterbodies, and routine maintenance of artificial water supply or drainage, in irrigation areas and districts, and for routine and emergency work in irrigation areas and districts,*
- (e) *to encourage sustainable agriculture, including sustainable aquaculture,*
- (f) *to require consideration of the effects of all proposed development in the State on oyster aquaculture,*
- (g) *to identify aquaculture that is to be treated as designated development using a well-defined and concise development assessment regime based on environment risks associated with site and operational factors.*

The SEPP sets out provisions relating to state significant agricultural land, farm dams, livestock industries (not grazing), aquaculture development and rural land sharing communities. The site is not identified as state significant agriculture land under this policy, nor is the development related to the above uses.

Schedule 4 of the SEPP includes standard provisions relating to primary production and rural development for non-standard local environment plans. The site is subject to the provisions of Tweed Local Environment Plan 2014 which is based on the Standard Instrument and therefore is not applicable to the proposal. Further consideration of this SEPP is not required.

**(a) (ii) The Provisions of any Draft Environmental Planning Instruments**

There are no draft environmental planning instruments that apply to the proposed development.

**(a) (iii) Development Control Plan (DCP)**

Tweed Development Control Plan

A3-Development of Flood Liable Land

A portion of current Lot 92 is mapped as being affected by possible flooding from the Clarrie Hall Dam. No additional dwellings are proposed that would be affected by flooding and the proposal is considered to be compliant with the provisions of this Section of the DCP.



## A5-Subdivision Manual

The aims of the Subdivision Manual are:

- *Present Council's strategic plan objectives of the development of subdivisions;*
- *Achieve the highest quality and "best practice" of subdivision development on the Shire;*
- *Implement the policies and provisions of the NSW State Government in terms of seeking to achieve quality of subdivision planning and development;*
- *Provide guidelines and development standards for the development of subdivisions.*

Section A5.5 Rural Subdivision Guidelines and Development Standards as well as the provisions contained in Section 5.4 are applicable to the proposal.

### *Physical Constraints*

- *Flood liable land*

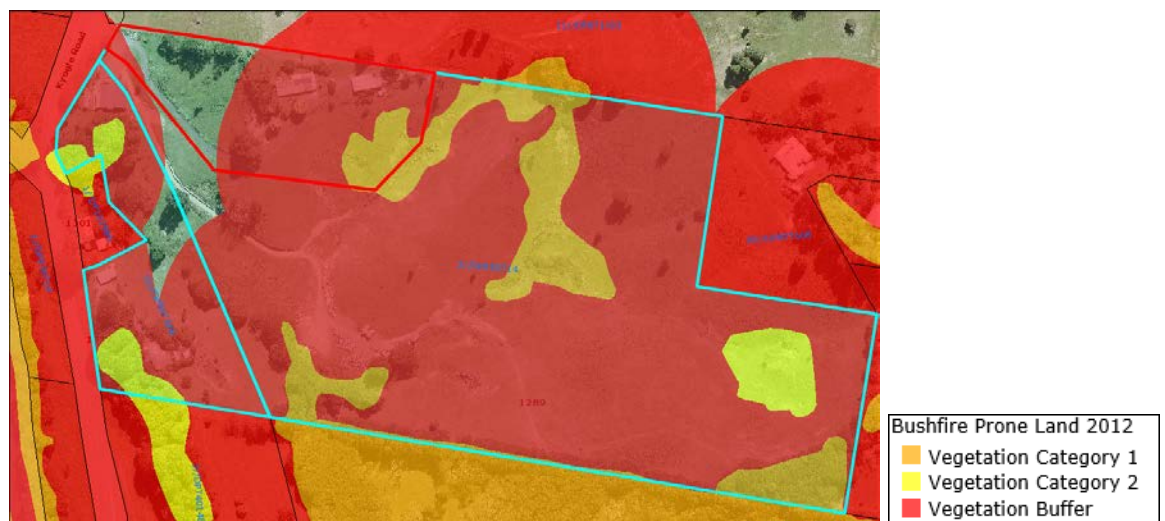
No fill is proposed to facilitate the boundary alteration the proposal does not increase the flood risk to any dwellings. The existing dwellings remain above the estimated flood level.

- *Bushfire Risk*

The subject site is mapped as bushfire prone. The existing dwellings on each of the subject lots are on land mapped as being with the Vegetation Buffer.

The application was accompanied by a Bushfire Assessment Report and the application was referred to the Rural Fire Service in accordance with Section 100B of the Rural Fires Act 1997. The RFS have issued General Terms of Approval in relation to asset protection zones.

The proposal is considered to be acceptable with regard to bushfire hazard of the land.



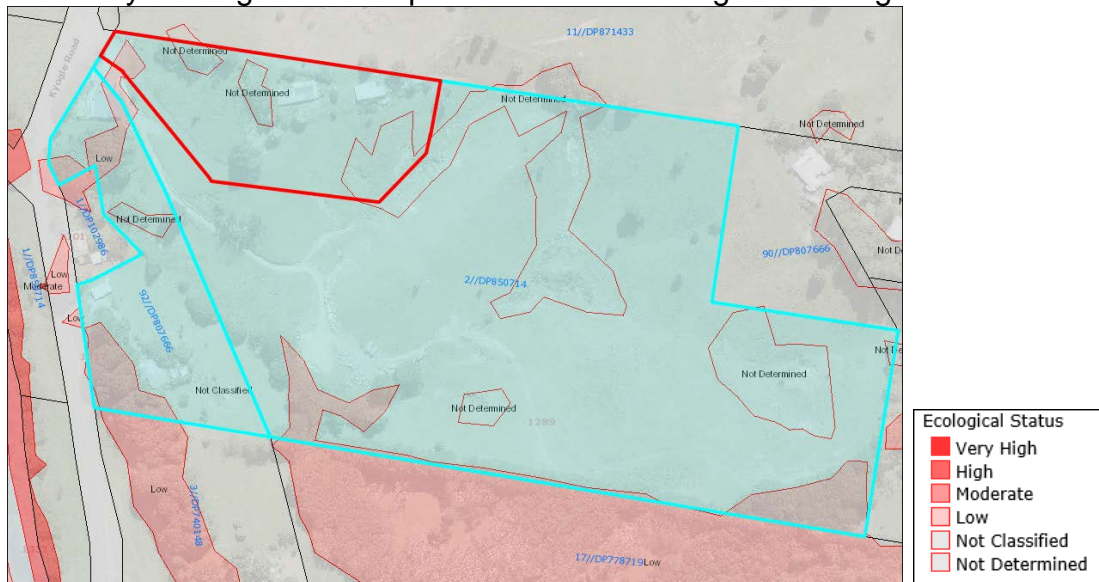
- *Native Vegetation and Significant Vegetation*

The subject lots are currently used as grazing land and for rural residential purposes. Each of the lots contain managed gardens in association with the respective dwellings.

The site is not identified on the Biodiversity Values Map.

Proposed Lot 20 (2.072ha) is substantially cleared of native vegetation. Proposed Lot 21 (14.38ha) is also substantially cleared however does include stands of mature trees near the southern boundary and adjacent to Kyogle Road. These areas are mapped as Low Ecological Status on Councils Vegetation Mapping and are not on land affected by the altered boundary alignment.

No vegetation is proposed to be removed to facilitate the proposal and any new boundary fencing will not require the removal of significant vegetation.



- *Landscape visual character*

No subdivision works or vegetation removal is required to facilitate the proposal. The future land uses will be consistent with the current rural residential and grazing activities. As such it is considered that the proposal will not alter the landscape visual character of the locality and the proposal is considered to be acceptable in this regard.

- *On-site effluent disposal*

The applicant has not provided an on-site sewage management land capability assessment report or any supporting information discussing the suitability of the proposed lots for on-site sewage management. However it is considered that each of the proposed is of a size that is capable of accommodating appropriate onsite sewerage management systems.

- *Rural Watercourses and drainage*

Low order streams traverse the site and drain to the Tweed River located approximately 60m to the west of the site on the other side of Kyogle Road. The proposal will not impact these ephemeral streams.

As mentioned previously, no works are proposed to facilitate the boundary adjustment and no change to existing farming activities and rural living are proposed. The subdivision will not alter the drainage layout and the proposal is considered acceptable in this regard.

- *Rural Subdivision Structure/ Lot Layout*

Lot layout should consider environmental constraints and encourage and promote the continuation of agricultural uses of the land. In accordance with the requirements of this Section, each of the proposed lots:

- Have access to a road reserve;
- Is able to comply with Planning for Bushfire Protection 2006;
- Is capable of accommodating appropriate on-site sewerage management systems; and
- Is of an appropriate size to allow for adequate separation of dwellings to rural activities.

The proposal will result in a reduction of road frontage for new Lot 20 from 32.5m (existing Lot 2) to 20m however this is considered to be acceptable. No changes to the existing access to the dwellings is proposed.

An easement for access, being a proposed Right of Carriageway is indicated on the plans to facilitate ongoing access for the farm shed located on proposed Lot 21.

- *Rural Movement Network*

No new roads are proposed and no changes to existing access is proposed. The proposal is acceptable in this regard.

**(a) (iia) Any planning agreement or any draft planning agreement under section 7.4**

There are no planning agreements applicable to the proposal.

**(a) (iv) Any Matters Prescribed by the Regulations**

Clause 92(1)(b) Applications for demolition

Not applicable

Clause 93 Fire Safety Considerations

Not applicable. No changes to existing buildings is proposed.

Clause 94 Buildings to be upgraded

Not applicable. No changes to existing buildings is proposed.

- (a) (v) **Any coastal zone management plan (within the meaning of the Coastal Protection Act 1979),**

**Tweed Shire Coastline Management Plan 2005**

This Plan applies to the Shire's 37 kilometre coastline and has a landward boundary that includes all lands likely to be impacted by coastline hazards plus relevant Crown lands. The primary objectives of the Coastal Management Plan are to protect development; to secure persons and property; and to provide, maintain and replace infrastructure.

The proposed development is not considered to impact upon that coastline with regard to demands and issues identified within the Plan for the whole of the Tweed coastline (Clause 2.4.1) including: recreation; water quality; heritage; land use and development potential; coastal ecology; and, social and economic demand. It is considered that the proposal represents an appropriate development on land zoned for residential use and achieves an adequate spatial separation from the coastal foreshore. The proposal is generally consistent with the objectives of the Management Plan.

**Tweed Coast Estuaries Management Plan 2004**

The proposed development is not within Cudgen, Cudgera or Mooball Creeks. This Plan is therefore not relevant to the application.

**Coastal Zone Management Plan for Cobaki and Terranora Broadwater (adopted by Council at the 15 February 2011 meeting)**

The subject site is not located within the Cobaki or Terranora Broadwater (within the Tweed Estuary), with this Plan therefore not relevant to the proposed development.

- (b) **The likely impacts of the development and the environmental impacts on both the natural and built environments and social and economic impacts in the locality**

Context and Setting

The proposed boundary realignment does not result in any change of use of the land. The surrounding rural land uses are a mix of agricultural and rural residential uses. Current lot sizes in the surrounding rural zone varying in size 57ha to 2798m<sup>2</sup>. The proposal is therefore considered to be consistent with the context and setting of the rural location.

Flora and Fauna

As mentioned previously, no vegetation removal is required to facilitate the proposed boundary adjustment and the proposal will not enable any additional clearing of

vegetation under the *Local Land Services Act 2013* noting that the land affected by the proposed altered boundary is cleared grazing land.

The proposed development satisfies Section 1.7 of the EP&A Act 1979 - Application of Part 7 of Biodiversity Conservation Act 2016 and Part 7A of Fisheries Management Act 1994.

Farmland of State or Regional significance

The subject site is partially mapped as Regionally Significant Non-Contiguous Farmland under the Northern Rivers Farmland Protection Project 2005. The aim of the Farmland Protection Project is to protect significant farmland from future rezoning for residential purposes. The proposal does not relate to dwellings on Regionally Significant Farmland and does not restrict any use of the land Regionally Significant Farmland for agricultural purposes. The proposal is not inconsistent with the intent of the *Northern Rivers Farmland Protection Project*.



**(c) Suitability of the site for the development**

Surrounding Landuses/Development

The surrounding land uses comprise primarily of agricultural uses and rural residential uses. The application states that there is no change proposed to the existing land uses and the objective of the proposal is to facilitate the ongoing agricultural use of the land.

The proposal is considered to be consistent with surrounding land uses which are a mix of rural residential lots and agricultural land holdings.

**(d) Any submissions made in accordance with the Act or Regulations**

The application was referred to the Rural Fire Service who issued General Terms of Approval with regard to asset protection zones for each of the existing dwellings. The General Terms of Approval are considered to be reasonable and appropriate.

**(e) Public interest**

The proposal relates to the reorganisation of lot boundaries to facilitate on ongoing agricultural activity and no physical or environmental impacts have been identified. The proposal therefore is considered to be in the public interest.

**OPTIONS:**

1. Refuse the application in accordance with the recommendation.
2. Council propose an alternate decision.

Option 1 is recommended.

**CONCLUSION:**

The proposed boundary alteration is unlikely to result in a significant impact on the physical landscape or the environmental or cultural values of the land. The proposal is considered to be generally consistent with the existing rural character of the land. Furthermore, the proposal is considered to be generally acceptable with regard to relevant State Environmental Planning Policies and the Tweed Development Control Plan 2008.

The interpretation of the provisions of Clause 4.1C of the TLEP has been considered with respect to legal advice received and it is considered that the application cannot be considered to be a boundary adjustment pursuant to the provisions of Clause 4.1C. The proposed alteration to the lot boundary is considered to result in lots that are altered beyond a minor extent with regard to lot size and shape.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable

**b. Budget/Long Term Financial Plan:**

The applicant has a right of appeal in the NSW Land and Environment Court in respect of any Council determination of this application, such an appeal may have budget implications for Council.

**c. Legal:**

Yes, legal advice has been attached.

The applicant has a right of appeal in the NSW Land and Environment Court in respect of any Council determination of this application.

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Attachment 1. Johnson v Coffs Harbour [2018] NSWLEC 1094 (ECM 6067097)

(Confidential) Attachment 2. Lindsay Taylor Lawyers Legal Advice (TWD19007) (ECM 6067098)

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**2 [PR-PC] Planning Proposal PP17/0001 - Review of Development Standards - Response to Public Exhibition**

**SUBMITTED BY: Strategic Planning and Urban Design**

mhm



**Leaving a Legacy**  
*Looking out for future generations*

**LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:**

- 1 Leaving a Legacy
- 1.4 Managing Community Growth
- 1.4.1 Strategic Land-Use Planning - To plan for sustainable development which balances economic environmental and social considerations. Promote good design in the built environment.

**ROLE:** **Leader**

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**SUMMARY OF REPORT:**

Public exhibition of *Planning Proposal PP17/0001 Review of Development Standards* has concluded.

The Planning Proposal seeks to amend Tweed Local Environmental Plan 2014 (the LEP) to:

- limit the application of density provisions for Low Rise Medium Density (LRMD) housing in *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (the Code) in the R2 Low Density Residential and RU5 Village zones in the Tweed; and
- incorporate building height controls for the Area E Village Centre.

Direct notification was sent to over 10,000 landowners; four Community Conversations were conducted and 152 submissions were received. All submissions related to LRMD housing development. No submissions related to building heights in Area E Village Centre.

A summary and response to these submissions is presented in this report.

The majority of submissions (132) were in support of the proposed amendment to maintain the established density and lot size controls for medium density development by incorporating these into the LEP 2014.

The exhibition version of the planning proposal has been amended to reflect the feedback received during public exhibition. The final version of the planning proposal is attached to this report.



This report seeks Council's endorsement to forward the final version of the planning proposal to the Department of Planning, Industry and Environment (DPIE) to have the LEP amendment finalised.

At the time of finalising the preparation of this report, the NSW State Government made an announcement in respect of the Code.

Due to concerns expressed by a number of Councils, including Tweed, about the potential implications of the Code, the DPIE commissioned an independent review to assess progress on the Code to date, identify impediments to the Code's delivery in deferred areas, and make recommendations on the appropriate pathway forward to finalise the Code's implementation, for the 45 councils deferred from the commencement of the Code.

On Wednesday 19 September 2019 advice was published on the DPIE website regarding the completion of an independent review of the Code.

The DPIE website notes that:

*"The independent review identified strong support for an increase in housing supply and diversity that the Code seeks to provide. It also found that enhancing local character is important to the success of the Code.*

*The report recommended the temporary deferral of the Code for the 45 deferred councils be extended to 1 July 2020. This is to allow those councils time to complete their strategic planning, including Local Strategic Planning Statements and Local Housing Strategies and update their LEPs, and identify and map areas of special local character.", and*

*"As recommended by the independent review, the implementation of the Code will be deferred until 1 July 2020 for the existing 45 deferred councils. The extension will allow councils to progress their strategic planning initiatives and demonstrate how they intend to meet their local housing needs. The Department will also use the time to work closely with councils to identify and map areas of exceptional local character."*

As identified in this report, a number of approaches to ensuring that development occurs where most appropriate are either in preparation or proposed. Locality plans and identification in the Local Strategic Planning Statement of the need to review residential zones are two approaches currently being undertaken.

Notwithstanding the ability of these approaches to better define where low rise medium density development might occur through a much broader strategic process, the LEP amendments proposed in this planning proposal are consistent with the way Council has managed this issue and should proceed to the DPIE to have the plan made accordingly.

#### **RECOMMENDATION:**

**That Planning Proposal PP17/0001 Review of Development Standards (as provided in Attachment 1 to this report) be sent to the Department of Planning, Industry and Environment to have the plan made under s.3.36 of the *Environmental Planning and Assessment Act 1979*.**

## REPORT:

In accordance with Council's resolution of 7 December 2017, Planning Proposal PP17/0001 Review of Development Standards was placed on public exhibition for the period 6 August to 3 September 2019.

This report:

1. Provides background to the amendment of *Tweed Local Environmental Plan 2014* (the LEP);
2. Provides a summary of submissions received during public exhibition, and
3. Recommends that the planning proposal be sent to the DPIE to make the LEP amendment.

### Purpose of the Planning Proposal

This planning proposal seeks to amend the LEP by incorporating the following planning provisions, which are currently located in *Tweed Development Control Plan 2008 (the DCP)*:

- Building heights for Area 'E' Village Centre precinct, and
- Density and minimum lot size requirements for Low Rise Medium Density housing in the R2 Low Density Residential and RU5 Village zones.

The final version of the planning proposal is provided in Attachment 1.

### Background

While the inclusion of building height provisions for Area E resulted from preparation of the Area E locality Plan, an initiative of Council, and the need to include LRMD provisions in the LEP is a direct consequence of the implementation of the Code by the State Government.

The Code makes provision for a range of LRMD housing as complying development which will apply unless Council has a locally relevant provision within the LEP.

With the introduction of the Code, Council wrote to the DPIE expressing concern about the potential impact on all R2 Low Density Residential and RU5 Village zoned land in the Shire.

Whilst the R2 zone has provision for higher densities within 300 metres of 'business zones', the majority of R2 and RU5 zoned land is low density. Concerns were raised with DPIE about the longer term impacts on character, amenity and servicing of what are long-established low density residential neighbourhoods.

In response, the DPIE issued Council with a 12 month deferral to commencement of the Code until 31 October 2019; after which the Code would apply until such time as any amendment to the LEP is finalised.

The deferral has provided opportunity for Council to prepare a local alternative to application of the Code, which is, in part, the purpose of this planning proposal.

Following receipt of a Gateway Determination (dated 8 August 2018), two matters were queried with the DPIE relating to the written notification of 'affected landowners', and advice from the Rural Fire Service.

A response to the query was received on 31 May 2019 which advised that the requirements of the Gateway Determination would remain unchanged.

The planning proposal has since been publicly exhibited and a response to feedback received is provided following.

### **Public exhibition and landowner notification**

One of the requirements of the Gateway Determination was for Council “*to write to all affected landowners providing notice of the proposal and public exhibition in regard to the proposed changes to minimum lot size.*”

Affected landowners were identified as being the owners of properties who may be able to undertake the types of housing permitted by the Code and where these forms of development are currently not permissible by the LEP.

A total of 10,013 letters were sent to ‘affected landowners’; a copy of the letter can be seen in Attachment 2.

A range of supporting documents were exhibited with the planning proposal, including a table to assist landowners understand the differences between where the Code might apply and where Council’s current controls are applied; see Attachment 3.

Public exhibition occurred during the period 6 August to 3 September 2019. The planning proposal and supporting information were available on Council’s website and in hard copy at the Murwillumbah and Tweed Heads Administration offices.

Four Community Conversations were held during the exhibition period at Murwillumbah, Banora Point, Kingscliff and Pottsville. In total 124 people attended these sessions to discuss the proposal and its implications with Council officers.

While not identified in the pre-exhibition version approved for exhibition by the DPIE, prior to going on exhibition the Planning Proposal (Part 2 Explanation of Provisions) was simplified, a comparison table inserted, and discussion added to clarify Manor Houses and Terraces are also covered by the Code and are considered in the LEP amendment.

### **Submissions**

A total of 152 submissions were received which included submissions from:

- Banora Point & District Residents Association;
- Cabarita Beach, Bogangar Residents Association;
- Fingal Head Coastcare Incorporated;
- Fingal Head Community Association;
- Kingscliff Ratepayers Association;
- Submission from 52 Kielvale residents;
- Team Koala;
- NSW Rural Fire Service; and
- 144 public submissions

A breakdown of submissions (see Attachment 4) showed that:

- 132 respondents supported maintaining the existing provisions of the Tweed DCP;
- 18 respondents supported increased housing densities and application of the Code, and
- 2 respondents were indeterminate.

### **Submission summary**

#### ***Building heights for Area 'E' Village Centre precinct***

No submissions were received addressing building heights for Area 'E' Village Centre precinct.

#### ***Density and minimum lot size requirements for LRMD housing in the R2 Low Density Residential and RU5 Village zones***

#### **Support for the proposed LEP amendment (132 submissions)**

Issues raised by respondents supporting transfer of the existing DCP provisions into the LEP, and thereby supporting the planning proposal included concerns about:

- The longer term cost/benefit of increased population densities;
- Quality of life for current and future residents;
- Infrastructure capabilities;
- Character;
- Traffic;
- Parking;
- Public transport;
- Open space;
- Amenity and liveability;
- Social implications of closer living;
- Small community village lifestyle;
- Native vegetation in urban areas;
- Objection to a one-size-fits-all standardised approach to landuse planning;
- Sydney high density zone should not automatically apply to coastal and rural areas
- Private certifiers and Council oversight;
- Heritage houses; and
- 'Whole-of-zone' implications or site specific.

Respondents raised concerns about losing the character of existing neighbourhoods, streetscapes and localities in which they had been raised or invested in because of the established low density lifestyle.

Existing problems with lack of parking and the use of verges for parking, pedestrian access, increased traffic and congestion, noise, and social issues were raised as reasons to support the proposed amendment.

Submissions from community associations at Banora Point, Cabarita Beach, Bogangar, Fingal Head, Kingscliff, Kielvale and from Team Koala all wrote in support of the LEP amendment.

NSW Rural Fire Service raised no objection.

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The content of responses support the recommendation of this report to proceed with the planning proposal and request the DPIE to amend the LEP as proposed.

A detailed summation of issues raised can be seen in Attachment 4.

*Does not support the proposed LEP amendment (18 submissions)*

Issues raised by respondents supporting greater housing density and thereby not supporting the planning proposal included support for:

- Increasing population and families;
- business and employment opportunities;
- Changing character;
- Fast-tracking development approvals,
- Financial opportunities:
- Urban regeneration;
- Improved infrastructure; and
- Need to address housing crisis, affordability, diversity and increased supply;

Respondents saw opportunities that could flow from the application of the Code, including opportunities for greater housing availability and diversity, revitalisation, easier and faster approvals process, and employment, along with financial gains from increased individual development capability.

Within the R2 zone, provision is currently made for a higher density of housing where the property lies within 300 metres of a 'business' zone. In addition, medium density development is currently a possibility in the R1 General Residential, and R3 Medium Density Residential zones, with substantial areas of residential land zoned in areas such as Cobaki, Kings Forest, Bilambil Heights and Area E.

Council is consistently undertaking planning on a locality basis. Locality planning plays an important role in establishing desired futures for the Shire's towns and villages. Locality based landuse planning allows consultation with the community and a greater depth of assessment, understanding and tailoring of development outcomes.

This is considered a better approach to planning for medium density to ensure that development occurs in appropriate localities, rather than the Code approach of allowing medium density throughout all low density residential and village areas.

Notwithstanding the validity of comments received, the need for a more strategic assessment of residential zones is a matter that has been identified and will be addressed through preparation of Council's Local Strategic Planning Statement due for completion by mid-2020.

This planning proposal does not seek to limit the application of the Code in the R1 and R3 zones.

A detailed summation of submissions can be seen in Attachment 4.

Based on the broad support for the planning proposal it is recommended that the planning proposal be endorsed by Council for referral to the DPIE for making.

## OPTIONS:

1. The planning proposal be endorsed for submission to the DPIE to be made, or
2. No further action be taken to amend the LEP thereby allowing the Code to apply to all R2 and RU5 zoned land; and notify DPIE accordingly.

Option 1 is recommended, to maintain the established character and current provisions of the low density residential and village zones.

## Updated advice

Due to concerns expressed by a number of Councils, including Tweed, about the potential implications of the Code, the DPIE commissioned an independent review to assess progress on the Code to date, identify impediments to the Code's delivery in deferred areas, and make recommendations on the appropriate pathway forward to finalise the Code's implementation, for the 45 councils deferred from the commencement of the Code..

On Wednesday 19 September 2019 advice was published on the DPIE website regarding the completion of an independent review of the Code.

The DPIE website notes that:

*“The independent review identified strong support for an increase in housing supply and diversity that the Code seeks to provide. It also found that enhancing local character is important to the success of the Code.*

*The report recommended the temporary deferral of the Code for the 45 deferred councils be extended to 1 July 2020. This is to allow those councils time to complete their strategic planning, including Local Strategic Planning Statements and Local Housing Strategies and update their LEPs, and identify and map areas of special local character.”, and*

*“As recommended by the independent review, the implementation of the Code will be deferred until 1 July 2020 for the existing 45 deferred councils. The extension will allow councils to progress their strategic planning initiatives and demonstrate how they intend to meet their local housing needs. The Department will also use the time to work closely with councils to identify and map areas of exceptional local character.”*

As mentioned earlier in this report, a number of approaches to ensuring that development occurs where most appropriate are either in preparation or proposed. Locality plans and identification in the Local Strategic Planning Statement of the need to review residential zones are two approaches currently being undertaken.

Notwithstanding the ability of these approaches to better define where low rise medium density development might occur through a much broader strategic process, the LEP amendments proposed in this planning proposal are consistent with the way Council has managed this issue and should proceed to the DPIE to have the plan made accordingly.

**CONCLUSION:**

Public exhibition of the planning proposal has now concluded with the majority of submissions demonstrating a clear understanding of the purpose of the proposed amendment to the LEP and support of the proposed amendment.

While a number of submissions supported greater housing density, the locality planning proposal provides a better process to protect the character, amenity and serviceability of low density residential land. These issues form the basis of this planning proposal.

Further work will be required to assess the need for greater housing densities in appropriate locations, which will be considered in the ongoing preparation of locality plans and as within the context of Council's Local Strategic Planning Statement.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable

**b. Budget/Long Term Financial Plan:**

Written notification of the more than 10,000 affected landowners has been undertaken to meet the requirements of the Gateway Determination at cost to Council. Such notification practices are likely to be a common requirement of consultation, and as such, consideration will need to be given to cost implications of this approach.

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

**Consult** - We will listen to you, consider your ideas and concerns and keep you informed.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Attachment 1.	Planning Proposal PP17/0001 Review of Development Standards – Final version (ECM 6066980)
Attachment 2.	Notification Letter to affected landowners (ECM 6066981)
Attachment 3.	Comparison table presented at Community Conversations (ECM 6066993)
Attachment 4.	Summary of submissions received during public exhibition (ECM 6066994)

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**3 [PR-PC] Planning Proposal PP19/0006 to Amend Tweed Local Environmental Plan 2014 to rezone the Seabreeze Estate Pottsville 'Potential School Site' (Lot 1747 DP 1215252 Seabreeze Boulevard, Pottsville)**

**SUBMITTED BY: Strategic Planning and Urban Design**

mhm



**Leaving a Legacy**  
*Looking out for future generations*

**LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:**

- 1 Leaving a Legacy
- 1.4 Managing Community Growth
- 1.4.1 Strategic Land-Use Planning - To plan for sustainable development which balances economic environmental and social considerations. Promote good design in the built environment.

**ROLE:** **Advocate**

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**SUMMARY OF REPORT:**

In response to Council's resolution on 6 September 2018 a planning proposal seeking to rezone Lot 1747 DP 1255252 at Seabreeze Estate Pottsville, to help facilitate development of the site for a school was prepared and submitted to the NSW Department of Planning, Industry and Environment (DPIE) for Gateway determination.

The intended outcome of the planning proposal was to:

- realise the developer's original commitment and the community and Council's expectations to have a school developed on the site;
- improve clarity and certainty in regard to the development potential for the landowner, potential developers and the local community; and
- remove potential for inflated land valuation of the R2 zone by rezoning the land to SP2 Infrastrucutre to align with the intended school use.

The Planning proposal was referred to the DPIE for a Gateway Determination. The DPIE response, received 3 September 2019 does not support proceeding, based on a number of matters to be addressed.

This report addresses those matters raised by DPIE and seeks Council's resolution to resubmit the updated planning proposal for a Gateway Determination, amended in accordance with the discussion in this report and as provided in Attachment 1.



**RECOMMENDATION:**

**That:**

- 1. Council endorse submission of the attached planning proposal, as amended in accordance with this report, to the NSW Department of Planning, Industry and Environment for Gateway determination, noting the savings provisions in Section 1.8A of the *Tweed Local Environmental Plan 2014* would apply in relation to any Land and Environment Court judgement regarding DA18/0133;**
- 2. The Minister for Planning, Industry and Environment is advised that Tweed Shire Council is not seeking plan making delegations for this planning proposal;**
- 3. Upon receiving an affirmative Gateway Determination Notice all additional studies or work is to be completed prior to public exhibition and made available with the public exhibition documentation;**
- 4. The minimum exhibition period for the Planning Proposal should be for a period of 28 days or advised by the Gateway Determination; and**
- 5. Following public exhibition of the Planning Proposal a report is to be submitted to Council at the earliest time detailing the content of submissions received and if any issues have been addressed.**

**REPORT:**

**ISSUE**

On 6 September 2018, Council resolved that:

- "1. ....;
2. *The General Manger is to investigate options through a planning proposal to change the zoning of the site to a zone which more closely aligns with the Developer's original commitment, which was to provide a public net benefit by way of allocation of land for educational purposes, as depicted in Tweed Development Control Plan 2008 section B15; and*
- 3 *An independent valuation to determine market valuation differences between the existing R2 Low Density Residential and an applied Special Purpose – Education zoning (SP1) would assist with Council's consideration of the potential use or uptake of the land and is to be undertaken only if the Proponent agrees to pay Council's costs of having one prepared."*

In response to Council's resolution a planning proposal was prepared and submitted to the NSW Department of Planning, Industry and Environment (DPIE) seeking to amend the Tweed LEP 2014 by rezoning the subject site to help facilitate development of the site for its primary intended use as a school in line with the developer's original commitment.

The intended outcome of the planning proposal was to:

- realise the developer's original commitment and the community and Council's expectations to have a school developed on the site;
- improve clarity and certainty in regard to the development potential for the landowner, potential developers and the local community; and
- remove potential for inflated land valuation of the R2 zone by rezoning the land to SP2 Infrastrucutre to align with the intended school use.

The DPIE advice, dated 3 September 2019, did not issue a Gateway approval to proceed based on the following:

1. *'the Council resolution dated 6 September 2018 accompanying the proposal does not endorse the submission of the planning proposal to the Department for a Gateway determination. A Council resolution specifically endorsing the submission of this proposal for a Gateway determination is to be provided;*
2. *the planning proposal's intent to rezone the subject site to SP1 Special Activities for educational/school purposes is not consistent with the Department's LEP Practice Note (PE 10-001 Zoning for Infrastructure in LEPs). A SP2 zone would appear more appropriate; and*
3. *the rezoning of the land from R2 Low Density Residential to SP1 or SP2 would reserve the land for a specific use and remove the existing development potential under the current residential zoning. Such a rezoning may trigger the need for acquisition of the land and Council should identify an appropriate acquisition authority and identify the land on the LEP's Land Reservations Acquisition Map.'*

Furthermore, DPIE recommended that Council await the outcome of the pending NSW Land and Environment Court appeal for this site, which is listed for December 2019, 'before

*proceeding with the planning proposal to ensure the Court process is not affected and that any proposed LEP changes are not inconsistent with the Court’s decision’.*

The appeal is in relation to an Integrated Development Application (DA18/0133) lodged on 21 February 2018 for a 72 lot residential subdivision of the site, which was unanimously refused by Council on 16 August 2018.

## BACKGROUND

The Seabreeze Estate residential development is located to the north west of the Pottsville Village Centre and to the north of Pottsville Road (refer to Figure 1).

The first stages (Stages 1 to 14) were completed under Development Consent No K99/1837 (as modified) and comprised around 500 lots. On 2 June 2013, Tweed Shire Council issued Development Consent No. DA13/0577 for an 88 lot subdivision of Stages 15 to 18. Stages 15 to 17 are now complete.

The subject site (Lot 1747 DP 1215252) forms Stage 18 of the Seabreeze Estate and has been identified as a ‘potential school site’ since the conceptual stages of the Estate, with early marketing using the school site as an attraction to the development site and area. In effect the nomination of the site for a school signified a net community benefit commitment associated with rezoning the Seabreeze Estate.

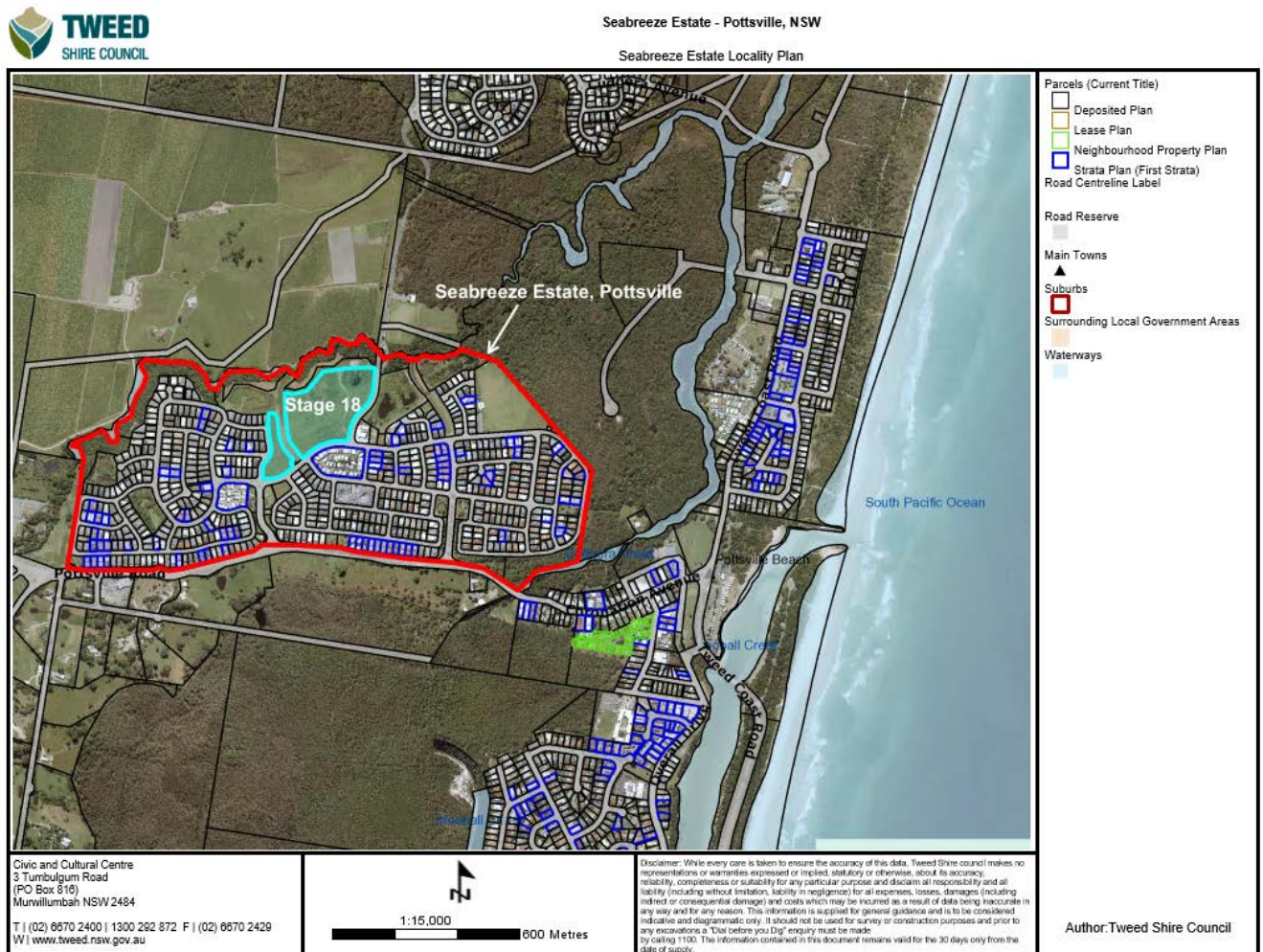


Figure 1 – Seabreeze Estate, Pottsville and the Subject Site



The intent of the original Seabreeze site masterplan was then integrated into *Section B15 Seabreeze Estate* of the *Tweed Development Control Plan (DCP) 2008 (Tweed DCP)*, and nominates the subject site of the Seabreeze Estate as a 'potential school site'. This designation has existed in substantially the same form in the relevant DCP since 2000.

The subject site is currently zoned R2 Low Density Residential under the provisions of the Tweed Local Environmental Plan (LEP) 2014 in accordance with the Department of Planning, Industry and Environment's LEP Practice Note *PN 10-0001 Zoning for Infrastructure in LEPs* (refer to Figure 2).

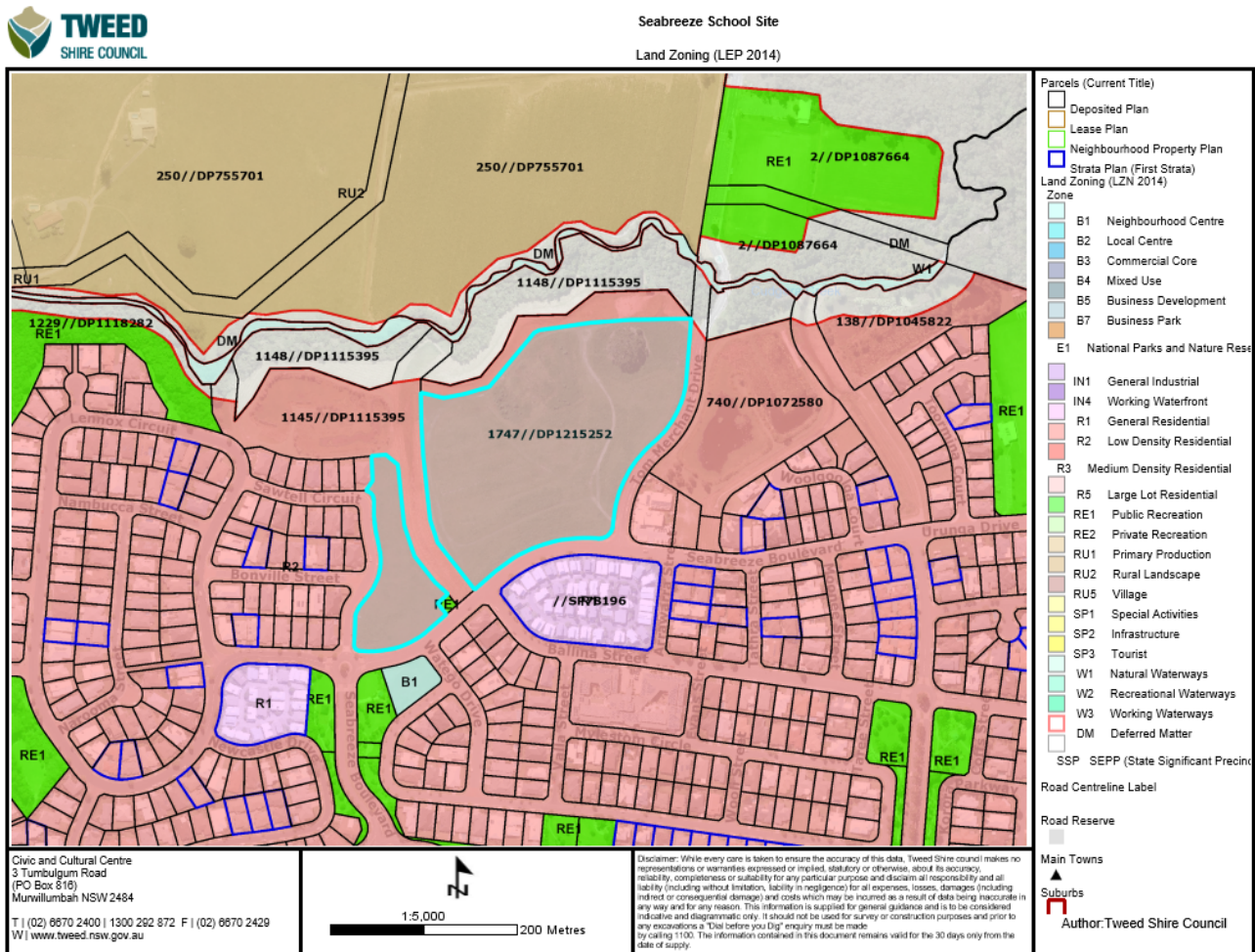


Figure 2 – Land zoning (LEP 2014)

The site has been the subject of several development applications and an appeal in the NSW Land and Environment Court, each seeking development of the land for residential purposes, which to date have all been refused. It is also the subject of a current appeal in relation to an Integrated Development Application (DA18/0133) lodged on 21 February 2018 for a 72 lot residential subdivision of the site, which was unanimously refused by Council on 16 August 2018.

On 7 August 2018 Council received a request on behalf of the landowner to amend Section B15 of the Tweed DCP to delete reference to the subject site as a 'potential school site', thus allowing it to be developed for residential purposes.

As part of that request the landowner noted that School Infrastructure NSW (formerly the Department of Education) advised that “the department does not wish to acquire the school site identified through Council’s Development Control Plan.”

The landowner further noted that an offer was received from an independent school (the Pacific College Group) however this offer was not considered to be commercially acceptable.

Council is of the view that the current R2 Low Density Residential zoning of the land is influencing the level of interest in the site for a potential school, if the market value is based on a residential development potential rather than an educational land use.

In order to remove the potential for land value bias, Council proposed to rezone the subject site to SP2 Infrastructure providing surety to the open market that the land would be available for acquisition at a market value aligned with the intended use of the site as a school.

## **DISCUSSION**

A response to the matters raised by DPIE on 3 September 2019, is provided below.

### **1. Land use zone**

Under the NSW planning system, the State Government has previously issued an LEP Practice Note (PN 10-001 Zoning for Infrastructure in LEPs) guiding councils to zone public infrastructure land to reflect the zoning of the adjoining land, which in this case is R2 Low Density Residential.

The intent of this approach was to provide greater flexibility for the provision of new infrastructure developments, redevelopment of sites for alternative uses and disposal of surplus public land.

In this instance however, Council considers it is reasonably likely that the market land value is cost prohibitive for the primary intended use as a school, due to its R2 Low Density Residential zoning.

In the original planning proposal Council proposed to rezone the site to SP1 Special Activities – Educational Establishment, the same zone as the Kingsliff TAFE site.

The objectives of the SP1 zone are:

- To provide for special land uses that are not provided for in other zones;
- To provide for sites with special natural characteristics that are not provided for in other zones; and
- To facilitate development that is in keeping with the special characteristics of the site or its existing or intended special use, and that minimises any adverse impacts on surrounding land.

On 3 September 2019, DPIE advised that a SP2 Infrastructure zone would appear more appropriate. The objectives of the SP2 zone are:

- To provide for infrastructure and related uses; and
- To prevent development that is not compatible with or that may detract from the provision of infrastructure.

Both the SP1 and the SP2 zone will permit the purpose as shown on the land zoning map, in this case, *Educational establishment*.

Council considers that either zone would achieve the objective of removing the potential land value impact based on a residential development potential rather than an educational use development potential.

As such, the attached planning proposal has been amended to seek rezoning of the subject site to SP2 Infrastructure, in accordance with DPIE's advice, with a zone nomination of *Educational establishment*.

## **2. Acquisition provisions**

On 3 September 2019, DPIE advised that reserving the land for a specific use and removing the existing development potential under the current residential zoning could trigger the need for acquisition of the land and listing in the table under Clause 5.1 of *Tweed Local Environmental Plan 2014*.

Land acquisition in NSW is governed by the Land Acquisition (Just Terms Compensation) Act 1991. In NSW, state and local government organisations can acquire property for public projects. This includes councils and state-owned agencies, such as School Infrastructure NSW.

Under Section 3.15 of the *Environmental Planning and Assessment Act 1979* and Division 2, Part 3 of the *Land Acquisition (Just Terms Compensation) Act 1991* the owner initiated acquisition provisions only apply where the land is "exclusively set aside for a public purpose".

Given School Infrastructure NSW's consistent advice in recent years that it has no intention to acquire the land for a school, it is highly unlikely to agree to be specified as the relevant authority to acquire the land for the exclusive use as a public school, in the *Tweed Local Environmental Plan 2014*.

While Council intends to see the site developed for the primary purpose of a school, in line with the developer's original commitment, neither Council, the provisions in DCP Section B15 or the planning proposal seek to reserve the site exclusively for a public purpose.

Council is aware of interest in the site from independent school providers and would support development of a school on the site by a private institution.

As such, the attached planning proposal does not seek to amend the *Tweed Local Environmental Plan 2014* to include an authority of the State as the relevant acquisition authority.

## **3. Development potential**

As noted by DPIE, rezoning the subject site from R2 Low Density Residential to SP2 Infrastructure would reserve the land for the specific use of a school and remove the existing development potential under the current residential zoning.

Council considers the proposed rezoning as the best means of removing the potential land value inflation associated with residential use and enabling a true test of the viability of the site for a school, whether that be a public or independent school provider.

If the rezoning is completed, and after a designated period no reasonable offer is made by a school provider to purchase the site, it would be considered appropriate for the site to default back to the existing R2 Low Density Residential zoning, including nomination for alternate net community benefit.

It is not the intention of the planning proposal to reserve the land for a specific use in perpetuity that may demonstratively not be required.

As such, the attached planning proposal has been amended to seek use of Clause 3.14(3A) of the *Environmental Planning and Assessment Act 1979* to rezone the site to SP2 Infrastructure for a specified time period of 5 years, following which it would default back to the existing zoning, with objectives for an alternate net community benefit.

This will ensure the site's development potential is not sterilised if the market demand for a school on the site is not there.

#### **4. NSW Land and Environment Court Appeal**

On 21 February 2018, the landowner lodged an Integrated Development Application (DA18/0133) for a 72 lot residential subdivision of the site, which was unanimously refused by Council on 16 August 2018.

The landowner is currently appealing Council's determination in the NSW Land and Environment Court. The hearing is listed for 2 to 4 December 2019.

On 3 September 2019, DPIE recommended that Council await the outcome of the appeal before proceeding with the planning proposal to ensure the Court process is not affected and that any proposed changes to *Tweed Local Environmental Plan 2014* are not inconsistent with the Court's decision.

Clause 1.8A of the *Tweed Local Environmental Plan 2014* states:

*"If a development application has been made before the commencement of this Plan in relation to land to which this Plan applies and the application has not been finally determined before that commencement, the application must be determined as if this Plan had not commenced."*

The savings provision under Clause 1.8A of the *Tweed Local Environmental Plan 2014* ensure that any proposed change proposed by the planning proposal would not impact on the Court's decision in relation to DA18/0133.

#### **OPTIONS:**

The following options are provided:

Option 1 - Provide endorsement to forward the attached planning proposal to the NSW Department of Planning, Industry and Environment for Gateway determination, noting the savings provisions in Section 1.8A of the *Tweed Local Environmental Plan 2014* would apply in relation to any Land and Environment Court judgement regarding DA18/0133, or

Option 2 - Await the outcome of the pending NSW Land and Environment Court appeal on DA18/0133 before forwarding the attached planning proposal to the NSW Department of Planning, Industry and Environment for Gateway determination, or

Option 3 - Defer forwarding the attached planning proposal for Gateway determination in favour of providing further amendment to the report.

Council staff recommend option 1.

### **CONCLUSION:**

A number of approaches have been made to Council to develop the Seabreeze potential school site for residential purposes, contrary to the original intent of the site.

Council has consistently maintained its position on the site, successfully defended against an appeal in the Land and Environment Court and refused development applications for residential development.

Anecdotal evidence suggests that the current R2 Low Density Residential zoning is inflating the land value such that the viability of the site for a school, either public or private, is being impeded.

It is considered the proposed rezoning is the best means of removing the potential inflation associated with residential use and enabling a true test of the viability of the site for a school.

This report proposes rezoning the site to SP2 Infrastructure for a specified time period of 5 years, following which it would default back to the existing zoning should no reasonable offer be made by a school provider to purchase the site during this time. This will ensure the site's development potential is not sterilised if the market demand for a school on the site is not there.

### **COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable.

**b. Budget/Long Term Financial Plan:**

Not applicable.

**c. Legal:**

The Council is currently defending an appeal in the Land and Environment Court lodged by the proponents.

**d. Communication/Engagement:**

**Consult** - We will listen to you, consider your ideas and concerns and keep you informed.



**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Attachment 1.

Seabreeze School Site Planning Proposal (PP19/0006) -  
Version 1 for Gateway Determination (ECM 6066513)

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## 4 [PR-PC] Community Participation Plan Requirements

**SUBMITTED BY:** Strategic Planning and Urban Design

mhm



Leaving a Legacy  
*Looking out for future generations*



Making decisions with you  
*We're in this together*

### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

1	Leaving a Legacy
1.4	Managing Community Growth
1.4.1	Strategic Land-Use Planning - To plan for sustainable development which balances economic environmental and social considerations. Promote good design in the built environment.
2	Making decisions with you
2.2	Engagement
2.2.2	Communications – To inform, educate and engage the public about Council and community activities

**ROLE:** **Leader**

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### SUMMARY OF REPORT:

Community Participation Plans (CPPs) are a new requirement under the *Environmental Planning and Assessment Act 1979 (EP&A Act)*. A CPP is specific to land use planning and must outline how and when planning authorities engage the community across their planning functions.

Council is required to have an endorsed CPP provided to the NSW Planning Portal by 1 December 2019.

The requirements of the EP&A Act have been reviewed in the context of the current Community Engagement Strategy (CES), prepared based on the requirements of the Local Government Act, 1993 (LG ACT).

In order to ensure integration of the plans, meet the legislative requirements of both the EP&A Act and the LG Act, and ensure a more streamlined framework for all community engagement and participation, the approach taken is to combine the CES and the CPP into a single document called the *Community Engagement and Participation Plan (the Plan)*.

The result will be one document that outlines Council's engagement and participation framework across all of its functions, and includes a Part B which addresses the requirements and standards specifically for land use planning.

This leaves a very tight timeframe for Council to publicly exhibit the Plan and report back to Council to the December planning committee.

Given the draft Plan will be considered at a Councillor workshop on 26 September 2019, this report advises of an addendum report to be provided to the Council meeting of 3 October 2019.

**RECOMMENDATION:**

**That an Addendum Report on Community Participation Plan Requirements will be prepared for consideration at the Council planning meeting to be held on 3 October 2019.**

**REPORT:**

As per summary.

**OPTIONS:**

Not applicable.

**CONCLUSION:**

Not applicable.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

All Council's in NSW are required to have a Community Participation Plan adopted by 1 December 2019 and provided to the NSW Planning Portal.

**b. Budget/Long Term Financial Plan:**

Council has committed a staff member for a period of 12 months to assist with the development of Community Participation Plan, Local Strategic Planning Statement and other strategic planning and urban design projects. Ongoing consultation and engagement will come at a cost to ratepayers which is not funded through the development application process.

**c. Legal:**

Environmental Planning and Assessment Act 1979 and the Local Government Act 1993.

**d. Communication/Engagement:**

**Consult** - We will listen to you, consider your ideas and concerns and keep you informed.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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**5 [PR-PC] Variations to Development Standards under State Environmental Planning Policy No. 1 - Development Standards**

**SUBMITTED BY: Director**

mhm



**Making decisions with you**  
*We're in this together*

**LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:**

- 2 Making decisions with you
- 2.1 Built Environment
- 2.1.2 Development Assessment - To assess development applications lodged with Council to achieve quality land use outcomes and to assist people to understand the development process.

**ROLE: Provider**

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**SUMMARY OF REPORT:**

In accordance with the Department of Planning's Planning Circular PS 08-014 issued on 14 November 2008, the following information is provided with regards to development applications where a variation in standards under SEPP1 has been supported/refused.

**RECOMMENDATION:**

**That Council notes the September 2019 Variations to Development Standards under State Environmental Planning Policy No. 1 - Development Standards.**

**REPORT:**

On 14 November 2008 the Department of Planning issued Planning Circular PS 08-014 relating to reporting on variations to development standards under State Environmental Planning Policy No. 1 (SEPP1).

In accordance with that Planning Circular, the following Development Applications have been supported/refused where a variation in standards under SEPP1 has occurred.

<b>DA No.</b>	DA19/0084			
<b>Description of Development:</b>	three attached dual occupancies (constructed in 3 stages, comprising an attached dual occupancy per stage)			
<b>Property Address:</b>	Lot 5 DP 25301, Lot 6 DP 25301, Lot 7 DP 25301 No. 19 Sutherland Street, Kingscliff			
<b>Date Granted:</b>	23/08/2019			
<b>Development Standard to be Varied:</b>	Clause 4.3 Heights of Buildings			
<b>Zoning:</b>	R3 Medium Density Residential			
<b>Justification:</b>	The subject application seeks a Clause 4.6 variation to Clause 4.3 - Height of Buildings of the TLEP 2014. The subject site is mapped has having a 9.0m height limited under the TLEP 2014. In summary the following variations are sought:			
	Lot	Proposed height	Variation sought	Percentage
	5	9.158m	158mm	1.7%
	6	9.158m	158mm	1.7%
	7	9.539m	539mm	5.9%
<b>Extent:</b>	The subject application seeks a Clause 4.6 variation to Clause 4.3 - Height of Buildings of the TLEP 2014. The subject site is mapped has having a 9.0m height limited under the TLEP 2014. In summary the following variations are sought:			
	Lot	Proposed height	Variation sought	Percentage
	5	9.158m	158mm	1.7%
	6	9.158m	158mm	1.7%
	7	9.539m	539mm	5.9%
<b>Authority:</b>	Tweed Shire Council under assumed concurrence.			

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable.

**b. Budget/Long Term Financial Plan:**

Not Applicable.

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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