

Draft LEP Amendment No. **22**

Planning Proposal for
Lot 8 DP 12676, Eviron Road, Eviron

Version 1 – Gateway Determination
February 2016

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Part 1 Objectives and intended outcomes

This Planning Proposal seeks site-specific amendment to the Tweed Local Environmental Plan 2014 (LEP 2014) in relation to land known as Lot 8 DP 12676 at Eviron Road, Eviron. The purpose of this amendment is to enable development of a dwelling house on the subject land.

A report to the Tweed Shire Council's Planning Committee meeting of 7 April 2016 recommended:

1. *A planning proposal pursuant to s.55 of the Environmental Planning and Assessment Act 1979, seeking to facilitate development of a dwelling house on Lot 8 DP 12676, at Eviron Road, Eviron be prepared and submitted for a Gateway Determination, as administered by the NSW Department of Planning & Environment;*
2. *The Minister for Planning or their Delegate be advised that Tweed Council is not seeking plan making delegations for the planning proposal;*
3. *The Minister for Planning or their Delegate be advised that the minimum exhibition period for this Planning Proposal should be 14 days;*
4. *On receipt of the Minister's Gateway Determination Notice to proceed any 'conditional' requirements of the Minister and any other study or work required by Council for the purpose of making a proper determination of the lands suitability are to be completed, and included within the public exhibition material;*
5. *That the planning proposal be publicly exhibited in accordance with the Gateway Determination; and*
6. *Following public exhibition of the Planning Proposal a report is to be submitted to Council detailing the content of submissions received and any proposed amendment(s).*

Part 2 Explanation of provisions

It is proposed to enable the intended outcome through the following amendments to the Tweed LEP 2014 Tweed LEP 2014:

- Amendment to the map pursuant to Clause 2.5 (Additional Permitted Land Uses Map) to identify land subject to this Planning Proposal as item number 13, and
- Inclusion of an additional item in Schedule 1, generally in the following terms:

"Item 12: Use of certain land at Eviron Road, Eviron:

- (1) This clause applies to Lot 8 DP 12676 located at Eviron Road, Eviron, identified as "16" on the Additional Permitted Uses Map.*
- (2) Development for the purpose of a dwelling house is permitted with development consent.*

Part 3 Justification

Section A Need for the planning proposal

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

There is no local or state strategic study or report that specifically references the subject site. Relationship and consistency of this Planning Proposal with the wider strategic planning framework is discussed within Section B of this Part of the document.

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

The intended outcome of this Planning Proposal can only be achieved through a site-specific amendment to the Tweed LEP 2014 to permit *dwelling house*, with consent.

Section B Relationship to strategic planning framework

1 Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?

This section of the Planning Proposal justifies consistency of expected outcomes with provisions of the Far North Coast Regional Strategy (FNCRS) 2006-2031.

Relationship with, and consistency of this Planning Proposal with the Far North Coast Regional Strategy 2006-2031	
Consistency with the aims of the Strategy: One of the aims of the FNCRS is to provide appropriately located rural residential opportunities around existing settlements.	Consistent: The proposal seeks to enable the development of a single dwelling house within an established rural residential area, located approximately 1km from Nunderi rural residential settlement.
Consistency with the Regional Strategy Map: The subject land is mapped as "Environmental Assets and Rural Land" on the Regional Strategy Map. According to the provisions of the FNCRS, this land should be protected from urban development other than appropriately planned rural residential development.	Consistent: The land was subdivided in 1923 and was seemingly for a rural residential purpose, as evidenced through the development of adjoining lands. This Planning Proposal does not seek to expand the rural residential land. Instead, it seeks to enable development on land which is within the established subdivision, but owing to changes in the planning laws in 1966 has been deprived on its dwelling entitlement.
Consistency with the actions of the FNCRS:	
1. Rural subdivision will not be permitted to fragment valuable farmland and reduce its productive potential.	Consistent: The proposal does not involve rural subdivision. It seeks to enable development of a dwelling house on land subdivided in the past for a rural residential development purpose.
2. New development adjoining or adjacent to farmland, extractive resources, waterways, wetlands, and areas of high biodiversity value will incorporate buffers to avoid land use conflict.	Consistent: The size, dimensions and location of the subject land enables accommodating buffers from the adjoining State and Regionally Significant Farmland.
3. Local environmental plans will include minimum subdivision standards for rural and environment protection zones, include provisions to limit dwellings in the rural and environmental zones, and not include provisions to permit concessional allotments.	Consistent: The proposal seeks to retain the existing subdivision standards and to include a provision (through Schedule 1 Additional Permitted Uses) allowing development of a single dwelling house on subject land.

4. Future rural residential land will only be released in accordance with a Local Growth Management Strategy agreed to by council and the Department of Planning, and consistent with the Settlement Planning Guidelines.	Consistent: The proposal does not seek to release new rural residential land.
5. Planning for rural residential land must be integrated with the supply of relevant infrastructure and transport provision.	Consistent. This proposal involves consideration to availability of infrastructure and transport provisions. The proposal affects land located within already established rural residential area.
6. Local environmental plans will protect and zone land with State or regional environmental, agricultural, vegetation, habitat, waterway, wetland or coastline values.	Consistent. This proposal does not affect land with State or regional environmental, agricultural, vegetation, habitat, waterway, wetland or coastline values.
7. Local environmental plans will not zone land within the Environmental Assets and Rural Land area to permit urban purposes, other than rural residential development. Existing and future rural residential development will be located in this area, but not where it conflicts or coincides with the attributes or values listed above.	Consistent. This proposal does not seek to amend zoning but to permit a single dwelling on an established lot.

Table 1: Relationship with, and consistency of this Planning Proposal with the Far North Coast Regional Strategy 2006-2031.

2 Is the planning proposal consistent with the local Council’s Community Strategic Plan, or other local strategic plan?

1.5.3 The Tweed Local Environmental Plan will be reviewed and updated as required to ensure it provides an effective statutory framework to meet the needs of the Tweed community.	Consistent. Current provisions of the LEP prohibit development of a dwelling house on subject land, despite its subdivision for that purpose in the past.
3.2 Retain prime agricultural land, farm viability, manage rural subdivision and associated landscape impacts	Consistent. This Planning Proposal does not affect land mapped as prime agricultural land or used for commercial farming. It seeks to enable development of a dwelling house on land subdivided for rural residential development in 1923.

3 Is the planning proposal consistent with the applicable State Environmental Planning Policies (SEPPs)?

SEPP No 55 – Remediation of Land

This SEPP considers that land which is known to be contaminated by past land uses can still be zoned for development as long as:

- (a) *the planning authority has considered whether the land is contaminated, and*
- (b) *if the land is contaminated, the planning authority is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for all the purposes for which land in the zone concerned is permitted to be used, and*
- (c) *if the land requires remediation to be made suitable for any purpose for which land in that zone is permitted to be used, the planning authority is satisfied that the land will be so remediated before the land is used for that purpose.*

The site inspection and review of historic aerial photographs indicate that although the subject land is cleared of native vegetation, it has not been recently used for commercial agriculture. Therefore the risk of contamination present on the site is assessed as very low, land contamination from past uses is not a significant concern and the planning proposal is considered consistent with provisions of this SEPP.

Notwithstanding, in order to further demonstrate compliance of this Planning Proposal with provisions of this SEPP, Council will require the preparation of 'Stage 1 Preliminary Investigation' report, should it receive a Gateway approval. The Report will be placed on public exhibition.

SEPP No 14 Coastal Wetlands, SEPP No 26 Littoral Rainforests, SEPP No 44 Koala Habitat Protection and SEPP No 71 – Coastal Protection

Lot 8 DP 12676 is not subject to any of these SEPPs.

SEPP (Infrastructure) 2007

The aim of this Policy is to facilitate the effective delivery of infrastructure across the State.

Preliminary, internal review of the Planning Proposal indicates that the site will rely on water harvesting and on-site sewage. No impact on State infrastructure is anticipated at this stage.

SEPP (Rural Lands) 2008

This Planning Proposal is consistent with this SEPP as it aims to retain rural zoning and existing subdivision standards. Development of a single dwelling house will enable opportunities for current and potential productive use of this land for agriculture as a small, or hobby farm.

As outlined in table on the following pages, this Planning Proposal is consistent with the Rural Planning Principles provided within this SEPP: it does not limit potential economic activities on subject site, it applies to land with no biodiversity or environmental values, it enables opportunities for rural lifestyle that may contribute to social and economic welfare of the rural community, considers infrastructure needs and is consistent with the Far North Coast Regional Strategy.

This Planning Proposal does not involve subdivision of land.

4 Is the planning proposal consistent with applicable Ministerial Directions (s117 Directions)?

The Planning proposal is consistent with the Ministerial s117 Directions, as outlined in the following table.

Table 2- Consistency with s117(2) Directions

S117 Direction	Application	Relevance to this planning proposal	Consistency with direction
1. Employment and Resources			
1.1 Business and Industrial Zones		Not relevant to this Planning Proposal	N/A
1.2 Rural Zones	<p><u>Objectives:</u> The objective of this direction is to protect the agricultural production value of rural land.</p> <p><u>Application:</u> Clause 4(a) of this direction is applicable to this planning proposal.</p>	<p>Applies as this planning proposal affects land within the RU2 Rural Landscape zone.</p> <p>This planning proposal does not intend to rezone the land from rural to another zone. Also, this planning proposal does not aim to increase the permissible density as the current zoning allows for development of a single dwelling house.</p>	Consistent.
1.3 Mining, Petroleum Production and Extractive Industries		Not relevant to this Planning Proposal	N/A
1.4 Oyster Aquaculture		Not relevant to this Planning Proposal	N/A
1.5 Rural Lands	<p><u>Objectives:</u> To protect the agricultural production value of rural land and to facilitate the orderly and economic development of rural lands for rural and related purposes.</p> <p><u>Application:</u> This direction applies to all planning proposals to which State Environmental Planning Policy (Rural Lands) 2008 applies, including Tweed Shire.</p>	<p>This Planning Proposal is consistent with the Rural Planning Principles: it does not limit potential economic activities on subject site, it applies to land with no biodiversity or environmental values, it enables opportunities for rural lifestyle that may contribute to social and economic welfare of the rural community, considers infrastructure needs and is consistent with the FNCRS.</p> <p>This Planning Proposal does not involve subdivision of land.</p>	Consistent.

Table 2- Consistency with s117(2) Directions

S117 Direction	Application	Relevance to this planning proposal	Consistency with direction
2. Environment and Heritage			
2.1 Environment Protection Zones		Not relevant to this Planning Proposal	N/A
2.2 Coastal Protection		Not relevant to this Planning Proposal	N/A
2.3 Heritage Conservation		Not relevant to this Planning Proposal	N/A
2.4 Recreation Vehicle Areas		Not relevant to this Planning Proposal	N/A
3. Housing, Infrastructure and Urban Development			
3.1 Residential Zones		Not relevant to this Planning Proposal	N/A
3.2 Caravan Parks and Manufactured Home Estates		Not relevant to this Planning Proposal	N/A
3.3 Home Occupations		Not relevant to this Planning Proposal	N/A
3.4 Integrating Land Use and Transport		Not relevant to this Planning Proposal	N/A
3.5 Development Near Licensed Aerodrome		Not relevant to this Planning Proposal	N/A
3.6 Shooting Ranges		Not relevant to this Planning Proposal	N/A
4. Hazard and Risk			
4.1 Acid Sulfate Soils	Applies when a relevant planning authority prepares a planning proposal that will apply to land having a probability of containing acid sulfate soils as shown on the Acid	The subject site is identified on the Tweed LEP 2014 Acid Sulfate Soils Map as containing class 2 and class 5 acid sulfate soils. The proposed dwelling is to be located on land mapped as class 5.	Consistent

Table 2- Consistency with s117(2) Directions

S117 Direction	Application	Relevance to this planning proposal	Consistency with direction
	Sulfate Soils Planning Maps.	Development of a single dwelling is unlikely to cause a disturbance of acid sulfate soils. This impact will be assessed at the DA stage.	
4.2 Mine Subsidence and Unstable Land		Not relevant to this Planning Proposal	N/A
4.3 Flood Prone Land	Applies when a relevant planning authority prepares a planning proposal that creates, removes or alters a zone or a provision that affects flood prone land.	<p>The majority of the site is located outside of an ARI 100 year flood area, however part of the southern portion of the lot, including the proposed site of the dwelling house, is identified within Council's mapping as being subject to flooding under a Probable Maximum Flood (PMF).</p> <p>The inconsistency with the direction is justified as Section 1.5 of Council's 'Policy – Flood Risk Management', developed in accordance with the NSW Floodplain Development Manual, identifies that residents within flood-prone areas can relocate to flood free areas as a result of the natural topography of the site, resulting in the Planning Proposal being acceptable for further consideration.</p>	Inconsistent, but justified against Tweed Valley Floodplain Risk Management Policy, prepared consistently with the NSW Floodplain Development Manual.
4.4 Planning for Bushfire Protection	Applies when a relevant planning authority prepares a planning proposal that will affect, or is in proximity to land mapped as bushfire prone land.	A small portion of the land is mapped as vegetation buffer of 100m from Vegetation Category 1. To satisfy requirements of Ministerial Directions provided under Section 117 of the <i>Environmental Planning & Assessment Act 1979</i> , this Planning Proposal will be further consulted with NSW Rural Fire Service, to assess its consistency with <i>Planning for Bushfire Protection 2006</i> guidelines.	Consistency will be verified through consultation with the NSW Rural Fire Service
5. Regional Planning			
5.1 Implementation of Regional Strategies	Planning proposals must be consistent with a regional strategy released by the Minister for Planning.	Consistency of this Planning Proposal with the FNCRS has been demonstrated in Section B 1 above.	Consistent
5.2 Sydney Drinking Water Catchments		Not relevant to this Planning Proposal	N/A
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	Applies (to Tweed) when a relevant planning authority prepares a planning proposal for land mapped as: State significant farmland, regionally significant farmland, or significant non-contiguous farmland.	This Planning Proposal applies to land that is fundamentally located outside of the area mapped as State significant farmland, in that the extent of overlap is considered to be a mapping anomaly given the bisection of and lack of continuity arising from the highway, as	Consistent

Table 2- Consistency with s117(2) Directions

S117 Direction	Application	Relevance to this planning proposal	Consistency with direction
		evidenced in the imagery provided. In any event the proposal to site a dwelling is such that it will not have any impact on that part of the land at any level.	
5.4 Commercial and Retail Development along the Pacific Hwy, North Coast		Not relevant to this Planning Proposal	N/A
5.8 Second Sydney Airport: Badgerys Creek		Not relevant to this Planning Proposal	N/A
5.9 North West Rail Link Corridor Strategy		Not relevant to this Planning Proposal	N/A
6. Local Plan Making			
6.1 Approval and Referral Requirements		Not relevant to this Planning Proposal	N/A
6.2 Reserving Land for Public Purposes		Not relevant to this Planning Proposal	N/A
6.3 Site Specific Provisions	Applies when a relevant planning authority prepares a planning proposal that will allow a particular development to be carried out.	The planning proposal seeks to permit development of a dwelling house, currently prohibited due to noncompliance with the Tweed LEP 2014 Lot Size Map. Permitting a dwelling on an established lot is of less impact or change than amending zoning or lot sizes, which could later the character of the large lot subdivision. The Planning Proposal does not contain schematic drawings.	Justifiably inconsistent – provisions of this planning proposal are of minor significance.
7. Metropolitan Planning			
7.1 Implementation of A Plan for Growing Sydney		Not relevant to this Planning Proposal	N/A

Section C Environmental, Social and Economic Impact

1 Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats will be adversely affected as a result of the proposal?

No impact on critical habitat, threatened species, populations or ecological communities or their habitats has been identified at this stage. As documented on aerial photography provided within Part 4 of this document, the site is entirely cleared of native vegetation. Review of historic aerial photographs indicates that the site has been cleared at least since 1962.

According to Council's environmental mapping database, the site is classified as *highly modified/disturbed* and *substantially cleared of native vegetation*.

2 Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

Aboriginal heritage

A search of the Aboriginal cultural heritage mapping and database indicated that there are no Aboriginal objects or places registered with the Office of the Environment and Heritage as Registered AHIMS (Aboriginal Heritage Information Management System) Sites. In addition, most of this land is cleared of vegetation. Preliminary review carried out by Council considered that is highly unlikely that the rezoning and development of the site would impact on Aboriginal cultural heritage. Council's Community Development Officer – Aboriginal, advised of no concern in regard to the proposal.

European Heritage

The heritage database provided under Schedule 5 of the Tweed LEP 2014 indicated that no items of non-Indigenous/European heritage significance are known within or immediately adjoining the subject site. No impacts are anticipated.

Visual amenity

The Planning Proposal seeks to enable development of a single dwelling on land located within a well-established rural residential area. Impacts of this development on visual amenity should be insignificant.

Considering the presence and nature of surrounding rural and rural residential development, further rural residential development in this area would be appropriate and be consistent with the character of the area.

Contamination of land

As discussed under Part 3 Section B of this Planning Proposal, Council will request a preliminary site contamination investigation to be prepared and provided for public exhibition.

3 How has the planning proposal adequately addressed any social and economic effects?

The Planning Proposal is not expected to generate any significant adverse social or economic impacts. The proposal will enable development of single dwelling on subject site.

Section D State and Commonwealth interests

1 Is there adequate public infrastructure for the planning proposal?

Consistent with other dwellings in the area, the subject site will have to rely on water harvesting and on-site sewage management system.

2 What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

Formal views of relevant authorities will be sought and considered following the Gateway Determination and as part of the exhibition period.

Part 4 Mapping



Fig 1: Locality Plan



SOURCE:
Aerial imagery was captured
April 2015 ©AAM Pty Ltd and NSW LPI

Cadastral: 02 February, 2016
© Land and Property Information (LPI) and
Tweed Shire Council.
*Boundaries shown should be considered
approximate only.*

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DO NOT SCALE
COPY ONLY - NOT CERTIFIED
Map Projection: Universal Transverse Mercator
Horizontal Datum: Geocentric Datum of Australia 1994
GDA
Grid: Map Grid of Australia, Zone 56

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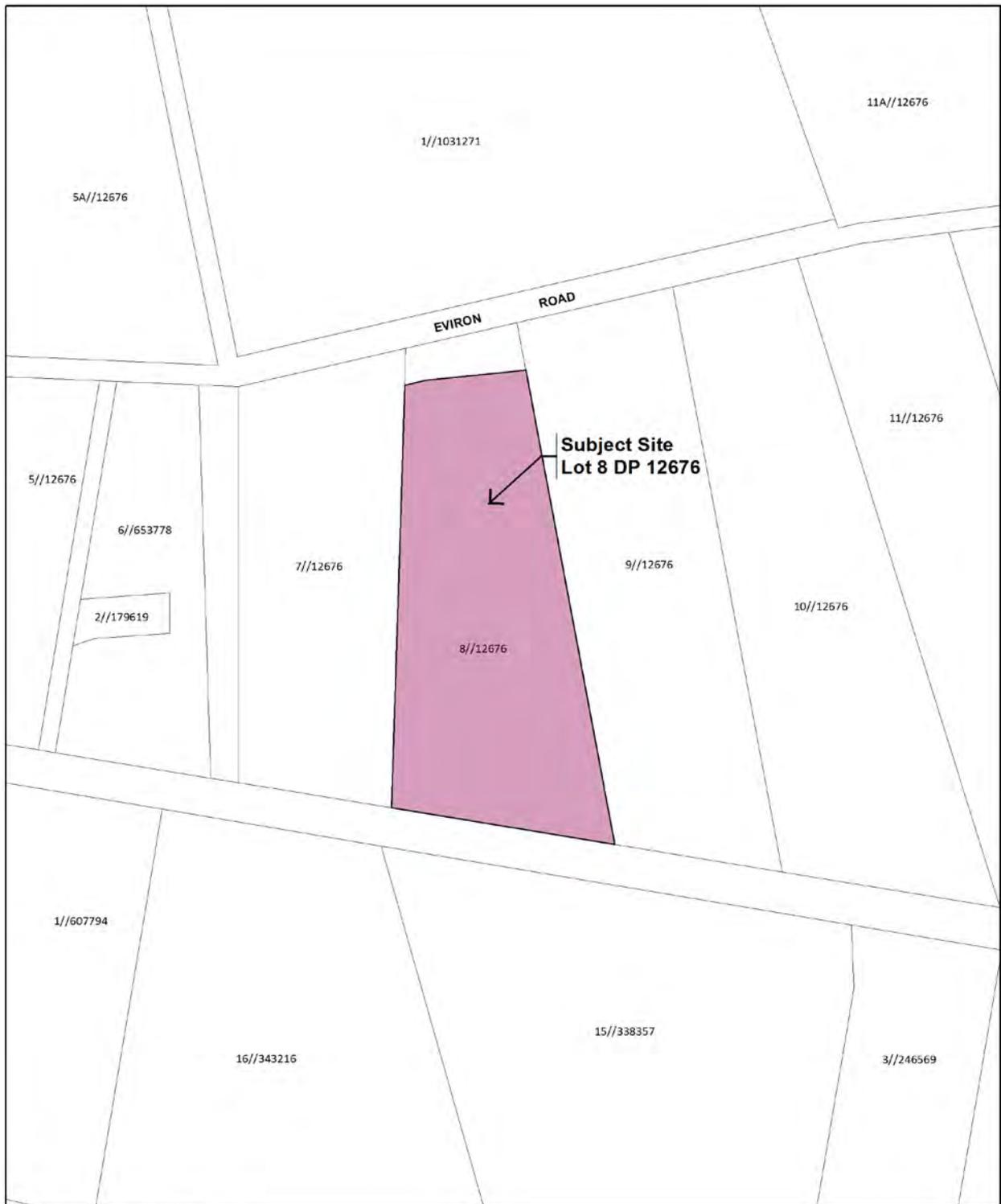
**Tweed Local Environmental Plan 2014
Planning Proposal**

**AERIAL IMAGERY - 2015
Affected Properties: Lot 8 DP 12676
Eviron Road, Eviron**

Council File | PP16/0001
revised | 02/02/2016

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Fig 2: Aerial photography



Tweed Local Environmental Plan 2014
Additional Permitted Use

Refer to Schedule 1

Cadastre: 02 February, 2016
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Boundaries shown should be considered approximate only.

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30 NOT SCALE
COPY ONLY - NOT CERTIFIED
Map Projection: Universal Transverse Mercator
Horizontal Datum: Geocentric Datum of Australia 1994
Grid: Map Grid of Australia, Zone 56

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Tweed Local Environmental Plan 2014
Planning Proposal

PROPOSED ADDITIONAL PERMITTED USE
Affected Properties: Lot 8 DP 12676
Eviron Road, Eviron

Council File | PP16/0001
Revised | 02/02/2016

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Fig 3: Proposed changes to Tweed LEP 2014 Additional Permitted Uses Map

Part 5 Community consultation

The Gateway determination will specify the community consultation that must be undertaken on the planning proposal. The consultation will be tailored to specific proposals generally on the basis of a 14 day exhibition period for low impact planning proposals and a 28 day exhibition period for all other planning proposals.

Council report recommends that this planning proposal should be exhibited for a minimum of 14 days.

Following the public exhibition process, this section will be amended to explain and summarise the outcomes of the community consultation stage.

Summary and conclusions

The objective and intended outcome of this planning proposal is to enable development of a single dwelling house on Lot 8 DP 12 676 located at Eviron Road, Eviron as infill within the already established surrounding rural residential development.

The preferred method to achieve this outcome is an amendment to Schedule 1 of LEP 2014 allowing development of a dwelling house despite the 40 ha subdivision control applying to the site.

This Planning Proposal will be subject to agency and community consultation. Outcomes of the consultation process will be provided in the final version of the Planning Proposal.

Part 6 Timeframe and information checklist

Task	Timeframe	Completed
Council Planning Committee meeting	March 2016	
Referral of the Planning Proposal for Gateway determination	March 2016	
Gateway Determination	April 2016	
Undertake requirements of the Gateway Determination and prepare V2 Planning Proposal	April 2016	
Public exhibition	May 2016	
Agency consultation	May 2016	
Review submissions, respond and prepare V3 Planning Proposal for Council's consideration	May/June 2016	
Council report to finalise and refer the plan to the DPE to be made	July 2016	
Referral of the Plan to the DPE for making	July 2016	
Plan to be made within 9 months of Gateway	August/September 2016	



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