

3 November 2015

Mayor and Councillors
Tweed Shire Council
PO Box 816
MURWILLUMBAH NSW 2484

Dear Madam Mayor and Councillors,

Re: Item 4 of Planning Committee Agenda (5 November 2015)
Planning Proposal PP12/0001 – 420-434 Terranora Road, Terranora

1. INTRODUCTION

Newton Denny Chapelle (NDC) has been engaged to prepare the following submission concerning the above Agenda Item. This submission objects to the staff recommendation to rezone Lots 2-8 DP 28597 as currently proposed and suggests an alternate approach to amending the planning controls on the land to provide some development potential, whilst still enabling the community to continue to enjoy the expansive views available over the site into the future.

2. KEY ISSUES

a) Strategic Planning

The subject land is not identified for future urban development in any of Council's strategic planning documents or in the Far North Coast Regional Strategy 2006.

Advancing a 'spot rezoning' for urban development on the edge of an identified growth area should only occur when clear merit can be established and where all legitimate planning concerns can be suitably addressed. This is particularly the case when the land exhibits important environmental values.

In this instance, the site is of key scenic importance to the community of Terranora and the Tweed and protection of these values must be paramount in Council's consideration of the proposal. This need for caution is highlighted by Tweed Shire Council's Community Strategic Plan 2011-2021 which

confirms that Council will ***“Protect, regulate and maintain natural assets (the coastline, coastal and inland waterways, biodiversity, bushland and scenic landscapes) for current and future generations”*** (emphasis added).

b) Regionally Significant Views

Council mapping indicates that the subject land is located within the Coastal Zone and is therefore subject to the provisions of State Environmental Planning Policy No 71 – Coastal Lands and the NSW Coastal Policy. Clause 7(a) and Clause 8 of SEPP 71 require certain matters to be considered when Councils prepare a draft Local Environmental Plan. Specifically, Clause 8(e) requires the following matters to be considered:

“any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant loss of views from a public place to the coastal foreshore” (Emphasis added)

In this instance, the site is critically important in maintaining public views from Terranora Road over Terranora Broadwater towards Tweed, the Gold Coast and the ocean beyond. This includes from the public roadway as well as the Council reserve located at the end of Nassau Ave, which is a popular viewing spot for locals and visitors alike.

This importance is recognised in Council’s ‘Area E Urban Release Code’ which identifies that the site the subject of the current rezoning provides significant regional views from a public vantage point (Refer Attachment 1). The Area E Code goes on to state as follows:

“Some of the site’s best views are experienced from the highest points of the site travelling along Terranora Road. It is important that these key vantage points and identified view fields are not obstructed by future development...Future development will need to consider:

- *Protecting key view lines from Terranora Road looking north;*
- *Maintaining the natural visual focus of Terranora Broadwater and its edges as a natural setting*
- *Maintaining natural visual focus of the Border Ranges;*
- *Identify key vantage points and key view fields both within and across the site*
- *Ensuring development protects key view lines and visual character of the site...”*

In addition, Council has committed to the preparation of the Tweed Scenic Landscape Strategy. Given the undisputed scenic values of the site, it is reasonable to assume that this Strategy will confirm these values and recommend ongoing protection of the existing public views. To advance a ‘spot rezoning’ of land which is outside of the established strategic planning framework and which will irreversible impact on the capacity to protect these views is considered inconsistent with the principles of good planning and not in the public interest.

c) Urban shaped lots do not necessarily equate to urban development potential

The subject lots were not created via a formal subdivision application process and no assessment occurred when the lots were created with respect to the suitability of the allotments for housing. In addition, the subject lots do not have recognised 'dwelling entitlements'. As such, the current owners of the properties have no legitimate expectation that the allotments are able to each accommodate a dwelling in the future.

There are hundreds of allotments in Tweed Shire which have been created but which do not have dwelling entitlements. That these allotments exist on paper should not be used as a justification to then flaunt good planning practice and rezone the land, particularly when a key strategic planning parameter (in this instance visual impact) suggests that the land is not suited for an urban zoning.

d) The views will not be protected

The Report to Council advises that 3D modelling has occurred to establish suitable building height limitations for each lot to be rezoned utilising the benchmark of 1.05m above Terranora Road.

There are 7 lots subject to the proposed rezoning and views are currently available from Terranora Road over each of the lots. The methodology presented by Council's staff (and summarised in Table 1 of the report) provides for the retention of the views over only 4 of these lots (being lots 2, 3, 4 & 5). The views over the remaining three lots (lots 6, 7 & 8) will be completely obscured by buildings extending between 2m – 4.4m above the level of Terranora Road.

Once again, the existing views are important to the local community and recognised as such in Council's strategic planning documents. Council should not be compromising these views by rezoning the subject land, particularly given that the land is not identified for urban growth in Council's planning strategies. We note also that the Council report indicates that the JRPP raised concerns with Council staff on several occasions regarding capacity to protect scenic amenity given the number of existing lots proposed to be rezoned.

e) Alternate Zoning Approach

Given the above, it is suggested that it would be contrary to the interests of the community to proceed with the rezoning of the land as currently proposed.

The following alternate is suggested as a way to provide some yield to the owners of the land, whilst continuing to maintain the available views from the site. This approach would involve:

- Rezoning Lots 2, 3, 4 & 5 DP 28597 to the R2 Low Density Residential Zone and imposing building height limitations for these lots as proposed in the staff report; and
- Declining to rezone Lots 6, 7 & 8 DP 28597, as future development of these lots is not able to occur in a manner which protects the visual qualities of the site.

This approach is able to be accommodated by way of the following alternate resolution (with changes indicated in red font):

That Council endorse:

1. Planning Proposal PP12/0001 420-434 Terranora Road, Terranora **be amended to remove Lots 6, 7 & 8 DP 28597 from the rezoning proposal, as the planning investigations to date have not been able to demonstrate that future residential development on these allotments will not have significant adverse impact on the existing views from Terranora Road.**
2. **Following removal of Lots 6, 7 & 8 DP 28597,** the Planning Proposal be placed on exhibition for a period of not less than 28 days concurrent with the planning agreement.
3. The Draft Planning Agreement be placed on public exhibition concurrent with the Planning Proposal once agreement between Council and the Landowners is achieved.
4. That maximum dwelling height limitations **for Lots 2, 3, 4 & 5 DP 28597** as detailed in Table 1 of the report be included in the Planning Proposal prior to public exhibition; and
5. It is noted that the rezoning of the adjoining properties being: Lot 1 DP 28597, Lots 9, 10 and 11 DP 28597, which are separately owned, is now scheduled to occur within a 'housekeeping' LEP and not as part of the planning proposal.

CONCLUSION

In summary, this site is not identified in any strategic planning document for urban investigation purposes and Council is therefore under no obligation to proceed to rezone the land as requested. Rather, the land is of key visual importance to the community of Terranora (and beyond) and Council has an obligation to the broader community via the provisions of the Coastal Policy and SEPP 71 to protect these views.

The fact seven lots of land exist does not create, in our view, sound planning justification to permit the construction of residential housing on each allotment. The lots were not created for housing and the rezoning of the land creates an undesirable precedent in supporting residential housing upon any land not containing a dwelling entitlement based on the fact that the lot currently exists.

Given the above, it is respectfully requested that Council not proceed with the Planning Proposal as currently drafted and proceed to amend the Proposal in the manner documented above.

Should you have any queries regarding the above, please do not hesitate to contact the undersigned on 02) 66221011.

Yours sincerely,

NEWTON DENNY CHAPELLE

A handwritten signature in black ink that reads "Dai Chapelle". The script is cursive and fluid, with the first name "Dai" and last name "Chapelle" clearly distinguishable.

DAMIAN CHAPELLE

Town Planner. BTP CPP.

ATTACHMENT 1

EXTRACT AREA E URBAN RELEASE DEVELOPMENT CODE

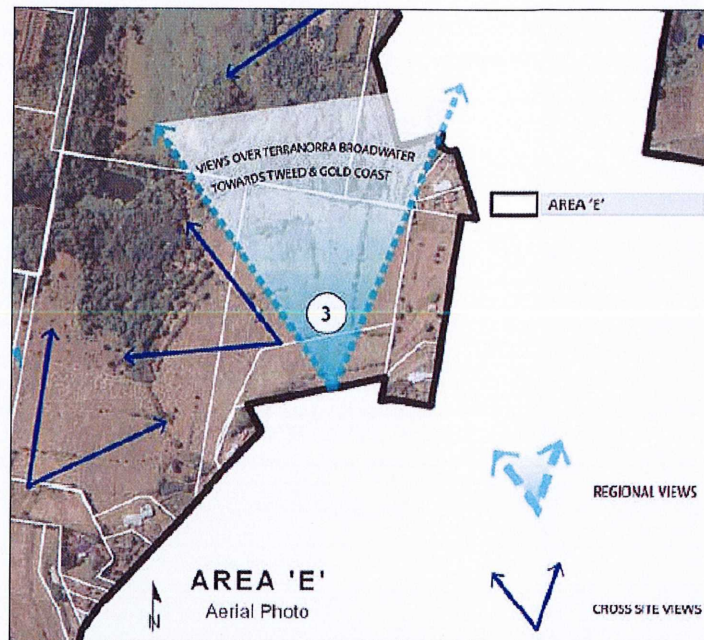


Plate 1 – Extract Figure 3.17 – Views Out of Area E

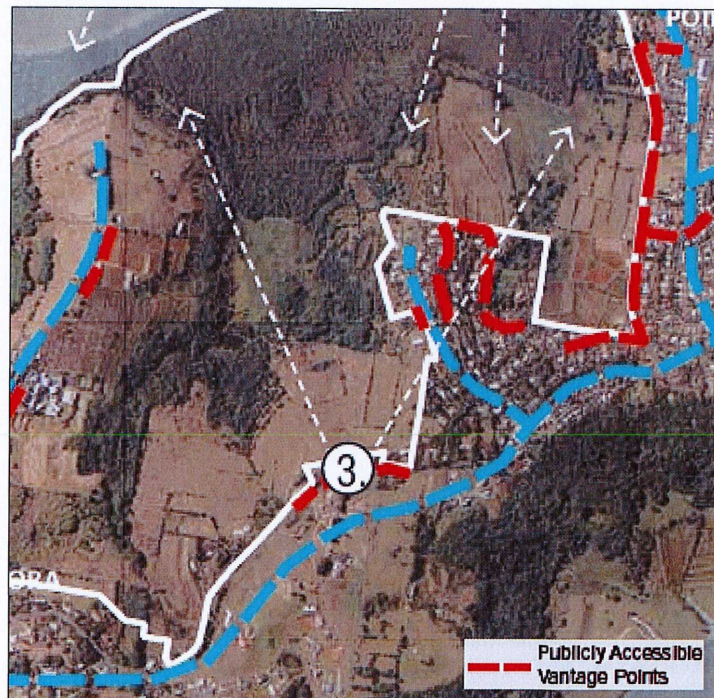


Plate 2 – Extract Figure 3.19 Visual Catchment of Area E and Key Public Vantage Points