

Submission to Council

Regarding a proposal for a multiple dwelling development for affordable rental housing

[REDACTED]

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Executive summary

The landowner proposes using an abandoned timber mill along Steve Irwin Way, at the southern fringe of Beewah, for affordable housing and a veterinary practice. The site is zoned Rural Zone, and these uses are innominate, and there is an annotation above the zone table to the effect that inconsistent uses should be not approved.

Nevertheless, innominate uses are not prohibited unless by Schedule 10 of the Planning Regulation and are therefore impact assessable.

Furthermore, Planning Act permits Councils to approve innominate uses where there is a 'need' and/or where circumstances arise which render the zone's purpose statement irrelevant.

The need, it is submitted arises by virtue of the faster than expected growth of Beewah, combined with the current affordable housing crisis, and the soon to be completed retirement facility to the north of the subject site creating a need for local veterinary services.

Meanwhile the precinct the site is part of has experienced significant change since the SCRC adopted the current planning scheme in 2015, and these circumstances, along with increased demand for housing, the site's suitability for rural land use activities, and other factors considered in this submission, give rise to circumstances in which the purpose statements for the Rural Zone are not relevant.

Based on these considerations the landowner seeks in an affirmation from SCRC of its willingness to support the proposed use of this site for the stated purposes – subject to the lodgement and consideration a fully formed application that responds to all the relevant assessment benchmarks.

1. Introduction

The subject site, [REDACTED] is former timber mill. The landowner wishes to use this site for a multiple dwelling development for the purpose of providing much needed affordable housing, and a veterinary clinic.

The site is at the southern fringe of Beewah, a major regionally hinterland township. It is zoned rural zone.

The site is zoned Rural Zone. Therefore, both uses are innominate (although a veterinary clinic is regarded as a potentially consistent use in the zone table at Part 6).

The Planning Act contains provisions enabling local governments with discretion to approve innominate uses which are not prohibited where there is a demonstrable 'need' for that use and/or where the planning scheme do not reflect current 'on-the-ground' circumstances. This discretion exists because 'zones' are not mean to be read as 'binary' documents but should be applied judiciously where circumstances require it¹.

There is a well-established need for affordable housing on the Sunshine Coast generally, and in and around Beewah (a major activity centre on the regional public transport network) – and the recent approval of a 200+ unit retirement facility, and the lack of any other veterinary service in the area, creates a future need for a clinic.

Meanwhile, in the interim between when the current planning scheme was adopted by SCRC, Beewah has grown more rapidly than anticipated and is set to continue to grow even faster when the stage 1 of CAMCOS gets underway – creating a demand for homes which is exacerbated by the current housing crisis. Further to this the precinct in which the subject site is located is in transition, notwithstanding a township boundary in place. While the general pattern of land use on the eastern side of Steve Irwin Way - small farming/agricultural uses, dwellings, and environmental/ecological reserves, mainly around local creeks, the side of Steve Irwin Way the site is on, west to the regional rail line represents an emerging growth corridor that will eventually link south through to Glass House Mountains. This is already apparent by the approval of the 200+ retirement facility to the north of the site, the zoning of 1ha lots to the west of the subject site as LDRZ, and the general fragmentation of land within this 'corridor'. These circumstances, it is further submitted, constitute reasonable grounds for considering the purpose of the Rural Zone as largely irrelevant as it relates to this site – which in any practical sense, cannot be used for a rural activity anyway.

In seeking an in-principle endorsement of the future use of this site for the stated purposes it is submitted Council would be following precedents established in Supreme Court decisions.

¹ *L.B. Town Planning v SCRC 1921 [2021] QPEC 36*

2. Statutory basis for approving ‘innominate’ MCUs

2.1 State planning legislation and regulation

Paraphrasing Section 50 of the Planning Act (2016) – Queensland’s land use and development system is built around a ‘triple bottom line sustainably framework in which decisions should be made having regard to both current and future generations – including ensuring enough affordable housing is provided in concert with the public benefit.

Section 45(5) - of the ‘Act’ is quoted in full below:

45 Categories of assessment

(5) An *impact assessment* is an assessment that—

(a) must be carried out—

(i) against the assessment benchmarks in a categorising instrument for the development;
and

(ii) having regard to any matters prescribed by regulation for this subparagraph; and

(b) may be carried out against, or having regard to, any other relevant matter (*authors underlining*), other than a person’s personal circumstances, financial or otherwise.

Examples of another relevant matter—

- a planning need
- the current relevance of the assessment benchmarks in the light of changed circumstances

Section 45(5) therefore can be said to provide local governments with a discretion to approve innominate material changes of use [MCU]. The leading authority on when this discretion should be relied on is *L.B. Town Planning v SCRC 1921 [2021] QPEC 36* (below).

2.2 SCRC planning scheme (2014)

Parts 5.3.2 and 5.3.3 of the planning scheme can also be summarised as stating the assessment of impact assessable material changes of use – including innominate/inconsistent uses - must have regard to the whole of the planning scheme, to the extent relevant.

These sections are preceded by Part 1.5(1) of the SCRC planning scheme can be in effect states, if during the assessment of an impact assessable, if a conflict arises between strategic framework section of the planning scheme any other part of the planning scheme, the former prevails.

2.3 L.B. Town Planning v SCRC 1921 [2021] QPEC 36

Determined by the Qld. Supreme Court, this was a successful appeal by the landowner against a refusal by Council of an application for a MCU (hotel/innominate use) in the rural-residential zone. The court considered Section 45(5) of the Planning Act in making its decision.

In this reported decision [paraphrasing], the test for 'need' was affirmed as: does the use improve the ease, comfort, convenience, and efficient lifestyle of the community; is there latent unsatisfied demand which is either not being met at all or not being adequately met - from the community's perspective, and not that of the applicant such that the need is not 'contrived'. It also commented that the need not be fixed.

Further, the court further stated [again paraphrasing] non-compliances with the planning scheme still needs to be examined - having regard to the circumstances as to do otherwise "*would ignore that planning schemes are not immutable, non-compliance with a planning scheme is not to be regarded as binary, and it should not be assumed that every non-compliance with a planning scheme warrants refusal of a development application.*"

....and this is based on 'well-settled' principles – that is "*necessary to examine the nature and extent of any non-compliance with an adopted planning control to determine how, and in what way, it impacts upon the exercise of the planning discretion....*"²

3. Proposed use

It is proposed that most of the site be used for a multiple dwelling development for affordable housing; with a portion of the northern part of the site, at the intersection of Steve Irwin Way and Back Creek Road, be developed as business activity – veterinary services.

While concept plans have not been prepared, pending a decision by Council, the subject of this submission, it is proposed that most of the vegetation along the eastern and northern boundaries would be retained, with vehicle access from the north for the veterinary services use onto Back Creek Road, and access to the affordable housing component via the site' western existing access point.

3.

² L.B. Town Planning v SCRC 1921 [2021] QPEC 36 – paras [287] to [290].

4. The site and its context

4.1 Site

The site is composed of 2 adjoining properties – a large irregular (northern) and a smaller (southern) lot for a combined area of approximately 1 ha (Figure 1).

The site was formerly used as a timber milling site. It contains some large buildings but no dwellings (Figures 6(a) and (b)).

Dense vegetation extends along the northern and eastern boundaries of the site (Figures 2 and 3) is the only vegetation of note.

The site is accessed along its northern and western boundaries (see Figures 3 4) and has a relatively open (non-vegetated) western side where Back Creek Road wraps around the north western boundary (Figures 4(a) and (b)).

Figure 1: map from SCRC mapping site.

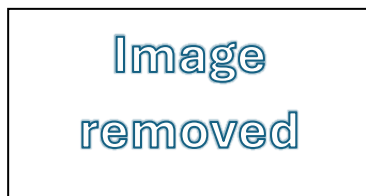


Figure 2: view of site from northern title boundary (Steve Irwin Way to left).

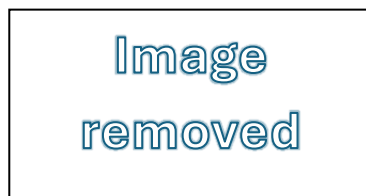


Figure 3: View of site's eastern (Steve Irwin Way) – entrance to Black Creek indicated by green sign.

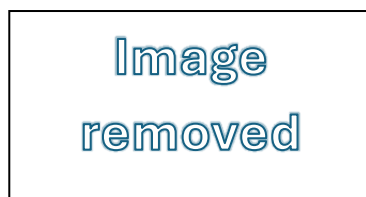


Figure 4(a): View of site's western boundary viewed from Black Creek Road.

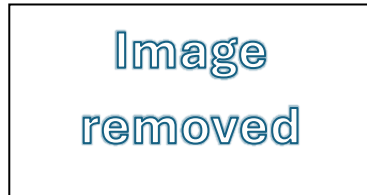


Figure 4(b): View of site's western boundary (southern section)

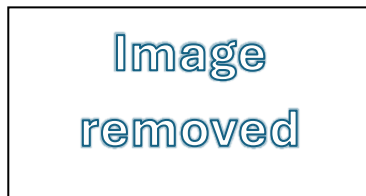


Figure 5(a): Figure along southern boundary of site.

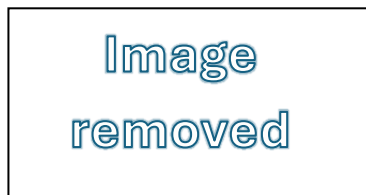
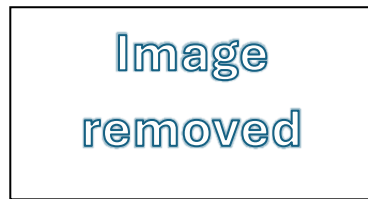


Figure 5(b): Figure along southern boundary of site from behind front lot facing Black Creek Road.



4.2 Abuttals

The site's eastern boundary abuts Steve Irwin Way (Figure 3), a former highway, now a secondary corridor, paralleling the Bruce/Pacific Highway. This road is sealed but not kerbed or channelled where it passes the subject site.

Further east is a mix of farms, dwellings, vacant land, and land reserved for environmental/ecologically significance.

Back Creek Road is sealed wraps around the northern, northwestern, and western sides of the site. This is sealed but not kerbed (Figure 2). Beyond the road to the north is Back Creek. Back Creek turns west and runs along the rear boundaries of dwellings to the west of the site, on the other side of Back Creek Road. The southern boundary is abutted by dwellings and a telecommunications tower (Figure 5).

Figure 6(a): view inside of site

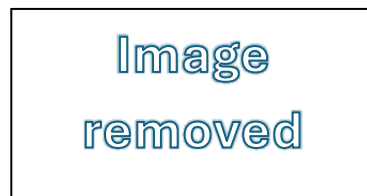
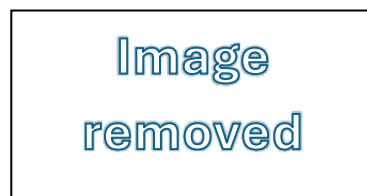


Figure 6(b): view inside of site



4.3 Retirement facility - 1227 Steve Irwin Way (MCU19/0227)

Planning permit MCU19/0227, issued 17/4/202, permits the development of 14.35 ha of land to the north and west of Back Creek as A 200+ retirement facility west to the rail line. The officers' report approving this development includes the following [paraphrased] comments:

- within the Urban Footprint of the SEQRP.
- consistent with the SPP.
- within the Beewah township boundary.
- does not conflict with any of the identified state interests.
- surrounded by low density residential development and rural land parcels with the north coast rail line along the rear (western) boundary.
- public transport connectivity to Beewah town centre to be improved by permit condition requiring provision of a dedicated shuttle bus, and
- pedestrian access to be improved by applicant competing missing pathway links in between the subject site and Beerwah town centre.
- density it is well below the maximum density provisions of 'the code'.
- landscape buffers along Back Creek and much of the front title boundary to be retained.
- access/egress via Steve Irwin Way approved by the referral authority.

4.4 Broader context

Completion of the retirement facility sets a new urban edge to the Beerwah township for the moment. Meanwhile Steve Irwin Way forms demarks the point where rural, rural residential environmental/ecological conservation land continues.

South along the western side of Steve Irwin way the pattern of land use is more fractured, and lot sizes vary. There are still some intact small cropping lots, but many are just being used for dwellings. Beewah and Glasshouse Mountains are both accessed by Steve Irwin Way and the regional train network.

This is contrasts with the officer's report concerning MCU19/0227 - that the [retirement facility] site is surrounded by rural land parcels.

5. Current planning scheme context

The site is zoned Rural Zone (Figure 7) while to the north and west the land is zoned Low-Density Residential Zone (Figure 8).

5.1 Zone

The site is zoned Rural Zone (Figure 7).

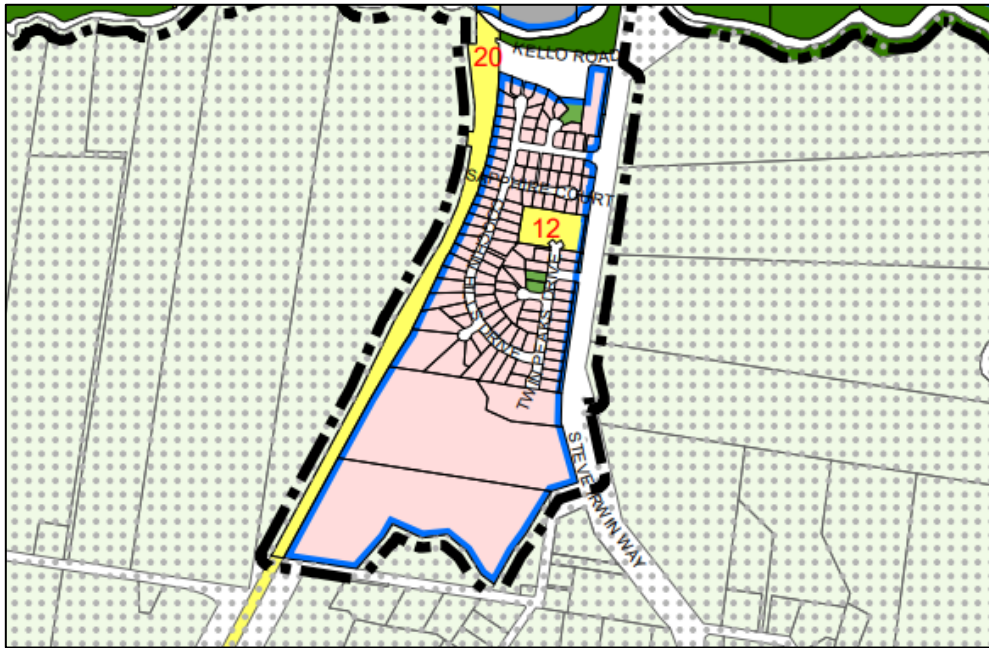
5.2 Local Area Plan

Neither Beewah nor the area immediately outside the outside Beewah township boundary, including the subject site is in a Local Area Plan.

Figure 7: Sunshine Coast Planning Scheme 2014 – (23 January 2024) - 48ZM.



Figure 8: Sunshine Coast Planning Scheme 2014 - (23 January 2024) - 49ZM



5.3 Local Plan Elements

There is a Local Plan Elements ‘plan’ however (Figure 9) which shows the location of township boundary, and a local ‘ecological linkage’.

Figure 9: Sunshine Coast Planning Scheme 2014 - (23 January 2024).



5.4 Overlays

The site and surrounding land are affected by various overlays. For the purposes of this submission these are not relevant other than as providing further development assessment tools to ensure any future development of the site responds to the local character, amenity, environmental and ecological considerations.

5.5 Planning Regulation (2017)

(a) *Schedule 6 – Development local categorising instrument is prohibited from stating is assessable development [MCU]*

- n/a

(b) *Schedule 7 - Accepted development [MCU]*

- n/a

(c) *Schedule 10 – Development assessment [MCU]*

- There is no known prohibition to the proposed use at Schedule 10 of the Regulation.
- The following Parts may apply to alter the category of assessment category of development for the proposed uses:
 - Part 3 - Clearing of native vegetation.
 - Part 9 – Infrastructure related activities.
 - Part 10 - Koala habit area – NB: the site is not in such an area.
 - Part 18 – Urban design

6. Relevant assessment benchmarks

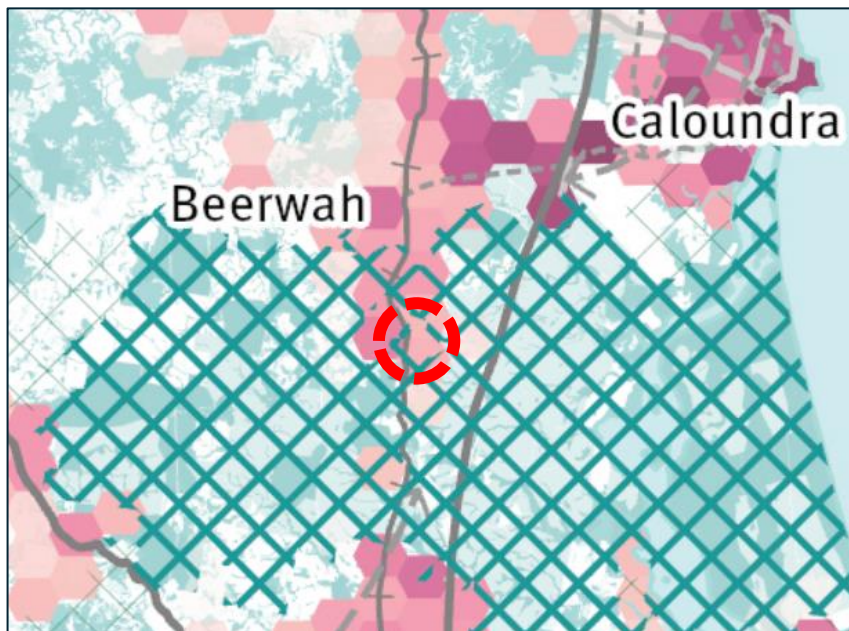
Table 5.5.19 of the planning scheme states an innominate use in the Rural Zone is impact assessable and the assessment benchmarks is 'the planning scheme'.

6.1 Part 2 – State planning provisions

- *Part 2.1 – State planning policy*
 - Liveable communities
 - Housing supply and diversity
 - Agriculture
 - Tourism
 - Biodiversity
 - Water quality
 - State transport infrastructure
- *Part 2.2 - Southeast Queensland Regional Plan 2009 – 2031.*

According to the *South East Regional Plan*³ (2023) the site is in a mixed density corridor surrounded to the east and west by an inter-urban break. Even under high resolution it is not clear however what the actual designation of this site is. This plan also emphasises the need for an increase affordable housing supply in regional areas, faster.

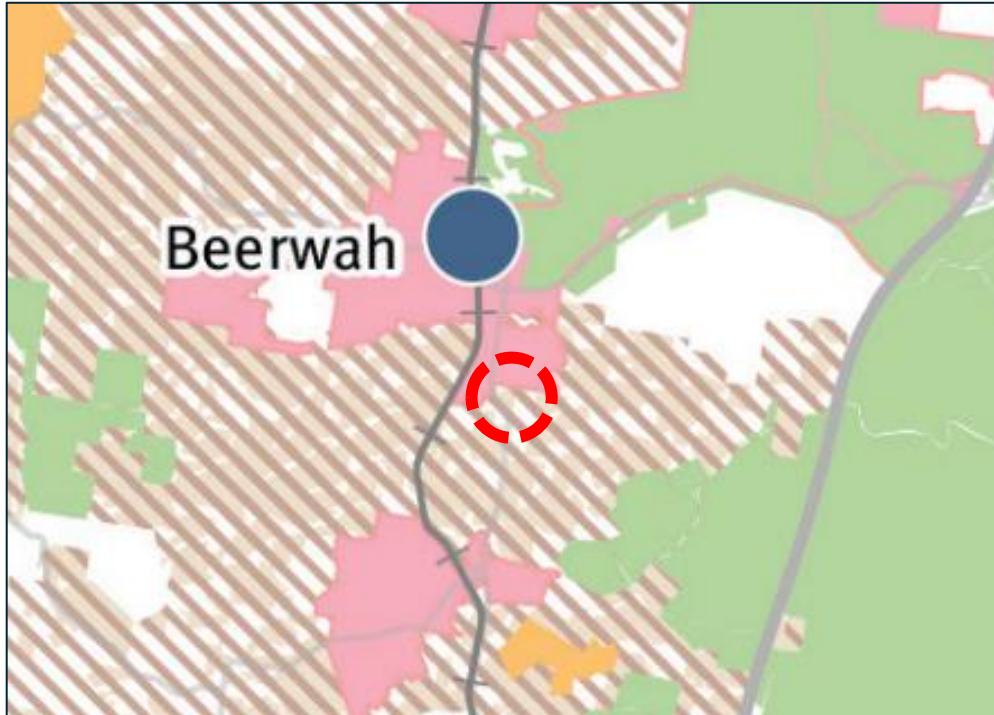
Figure 10 – Map 2 – Vision of SEQ at 2046



³ www.dsdmipprd.blob.core.windows.net/general/shapingseq-2023-high.pdf

According to 'Map 7 - Economic areas Inset map 2 – Northern' (Figure 11) - the site is at the interface between urban or rural – but again, it cannot be definitely stated which.

Figure 11: Map 7 - Economic areas Inset map 2 – Northern' [SEQ Reg. Plan: 2023]



6.2 Part 3 – Strategic framework

- *Part 3.1(2) – Strategic intent*
 - Settlement patterns
 - Economic development
 - Transport
 - Infrastructure and services
 - Natural environment
 - Community identity, character and social inclusion
 - Natural resources

For further comment concerning these statements refer to Sections 5.4 - 5.6 below.

6.3 Part 3.2 - Strategic intent (statements)

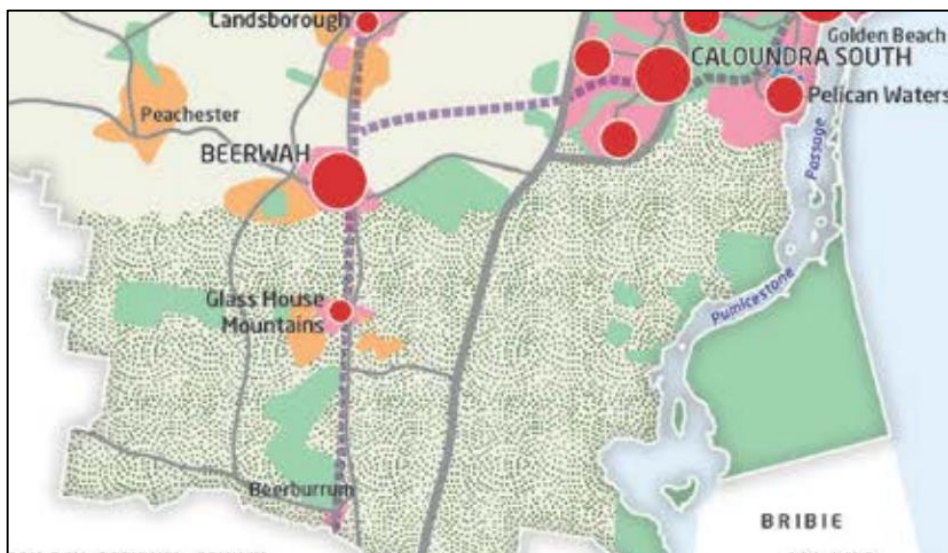
NB: The following comments should be read in conjunction with Sections 4.5 and 4.6 (below).

- the site is not reasonably useable for, or supportive of, a rural activity.
- there are no rural activities within the vicinity of the subject site.

- The area to the east and south of the site, though zoned Rural Zone is declared as ‘inter-urban break’, not ‘rural use’ in the *Sunshine Coast Spatial Concept* ‘map’ at Section 4.6.
- Dark Creek is a local natural waterway which has been significantly affected by Steve Irwin Way and encroaching historic land uses. Nevertheless, is it part of the
- Glass House Mountains drainage and ecological network. Existing planning controls however can moderate potential impacts to acceptable standards (in a similar manner as the retirement facility to the north).
- Density, scale, massing, and height are all also matters which can be managed and moderated by existing planning scheme controls to acceptable standards for amenity and character.
- The site already contains several 4 – 5-metre-high buildings and structures which are substantially not visible from the public domain and retention of vegetation along the Steve Irwin Way frontage and sensitive design will ensure this continues.
- ‘Urban’ infrastructure connections have been extended at least as far as the aged care residential community development site approximately 80 metres from the subject site (also refer to Part 4 – Local government infrastructure plan – below).

6.4 Part 3.2.8 – Sunshine Coast spatial concept

According to the SCRC ‘*Spatial Concept* ‘map’ (below) Beewah is one of 2 Major Regional Hinterland Activity Centres along the dedicated/priority public transport corridor’ and a designated ‘urban area’; West of Beewah is designated as ‘rural residential, while south is ‘Regional inter-urban break’. The nearest land designated expressly as ‘rural land’ is north of Roys Road (see legend over).





6.5 Rural Zone purpose statement

The site is zoned Rural Zone. The Purpose of this zone is stated at Part 6.2.19.2(1) is:

“...to provide for a wide range of rural activities and a limited range of non-rural activities which complement, value add or provide a service to rural areas. Activities in rural areas maintain and enhance the character, visual amenity, and rural production capability of the area.”

In response to the statements at Part 6.2.19.2(2) regarding how the ‘purpose’ of the rural zone is to be attained:

(a) Development provides for a wide range of rural activities including animal husbandry, aquaculture, cropping, intensive horticulture, roadside stalls, rural industries, wholesale nurseries and wineries.

The site is impracticable for current or future use for any of the activities referred to in this statement for the following reasons:

- ‘Animal husbandry’ and ‘rural industries’ are incompatible with surrounding ‘rural residential’ style and urban residential (including the retirement facility to the north) – and natural water courses.
- ‘Aquaculture’ is not a commercially viable use of this land.
- The site is not large enough nor regular enough to permit commercially viable cropping or intensive horticulture.
- Use of the site for a ‘roadside stall’ is not a long term viable economically option.
- The site is not large enough for a winery.
- Preliminary investigations into the possible use of the site as wholesale nursery have not yielded interest.

- (b) more intensive rural activities including animal keeping, intensive animal industry and extractive industry may also be established in the zone provided that adverse environmental and amenity impacts are avoided or appropriately managed.***

Such uses are not suitable for land abutting dwellings or local natural waterways as buffering distances are required.

- (c) permanent residential accommodation is limited to dwelling houses on existing lots, temporary residential accommodation which complements rural uses and promotes the sustainable use of rural land or the appreciation of the natural environment.***

Dwellings would be suitable for short term and long-term agricultural workers. Off-site environmental features can be appropriately protected and conserved via existing planning scheme and regulatory provisions. The site is not listed as a Koala habitat conservation site.

- (d) home based business may be established in the zone where the nature, scale and intensity of the activity is compatible with the character and amenity of the surrounding locality.***

n/a.

- (e) other non-rural activities that are compatible with a rural setting and support rural enterprise or tourism are also encouraged where they do not compromise the use of the land for rural activities.***

There are no such activities within proximity of the site. Vegetation screening along Steve Irwin Way obscures views from the public domain. The development is within proximity to local tourist attractions Australia Zoo.

- (f) non-rural activities are located, designed, and operated to minimise conflicts with existing and future rural activities on surrounding rural lands and avoid significant effects on rural amenity including through adverse noise or traffic generation.***

As per above, and Noise generated from the use will not exceed that currently generated by traffic along Steve Irwin Way. Access is along the northern and boundaries.

- (g) intensive rural activities are not located adjacent to sensitive land uses and are designed and operated to maintain the rural character and amenity of the zone.***

n/a.

7. Need for affordable housing in Beewah

According to Schedule 3 of the Infrastructure Plan at Part 4 of the planning scheme, the population of Beewah, was expected to be 4,3237 in 2016. This was expected to grow by 9% to 390 by 2021, and to 5919 by 2016 (a rise of 38%). However, the according to 'AZ Nations'⁴ population of Beewah today is 6,769 – which already exceeds the population predicted in 2015 of 6,244 – and does not take into account the very likely substantial rise in demand for housing in Beewah once Stage 1 of CAMCOS – a spur line connecting Beewah to Caloundra – commences, or the even greater demand which will occur once the line commences as Beewah will then become a major interchange, for people travelling to and from Brisbane form the north and coastal parts of Sunshine Coast.

...and it also doesn't consider the urgent need for affordable housing brought about by the national housing crises which all levels of government are endeavouring to respond to – including SCRC's in its Housing Action Plan⁵ and in the 10-year major planning scheme amendment process currently underway – both of which call for more affordable housing in and around major activity centres.

Such a focus is clearly endorsed by the Local Government Association of Queensland [LGAQ]⁶ – the peak body for Queensland local government authorities. It has already called on its members to is set aside 'standard' town planning practices to deliver more affordable housing – citing the affordability crisis is the 'top challenge facing local communities'.

Meanwhile the state government is rushing through legislation to amend the Planning Act and Planning Regulation.⁷

All of these actions and priorities clearly demonstrate that affordable housing is a need which requires the urgent attention of governments, including SCRC – and that Beewah in particular, should be the focus of such development as it is a designated major activity centre, and on the regional rail line.

⁴ www.aznations.com/population/au/cities/beerwah

⁵ www.projects/council-plans/sunshine-coast-housing-and-homelessness-action-planb-2023..sunshinecoast.qld.gov.au/council/planning-and-p. This plan was prepared in accordance with the State government's *Qld. Housing Strategy 2017- 2027*⁵ and *Qld. Housing and Homelessness Action Plan 2021-2025*⁵ - and the SCRC *Sunshine Coast Community Strategy 2019-2041*

⁶ www.lg.aq.asn.au/queensland-housing-crisis

⁷ *Housing Availability and Affordability (Planning and Other Legislation Amendment) Bill 2023.*

8. Current relevance of the assessment benchmarks in the light of changed circumstances

Over the course of the past 10 years, since the 2015 SCRC planning scheme was adopted, the situation 'on-the-ground' has changed markedly – and not only in terms of a critical shortage of affordable homes but also in terms of the pattern of land use in and around the subject site.

First however, it is necessary to determine what the SEQRP and SPP say about this site. As per Section 4 the SEQRP does not provide sufficient resolution to decide on a (strategically) preferred use of this site, and while the site is zoned Rural Zone, the *Precinct Elements Plan* (SEQRP - Map 2 - Vision of SEQ at 2046) shows the area south of the township boundary 'inter-urban break' – with the rural land located is west and north of Beewah.

Given the site is clearly not useable for a rural purpose common sense suggests it should therefore be permitted to be used for an urban purpose – and for housing.

Considering this strategic planning uncertainty, it is possible only to go on what has actually happened in this precinct to determine the most appropriate use of this site, which is:

Beewah has grown beyond expectations driving housing demand up. Once construction commences on Stage 1 of CAMCOS this demand will rise even more, while after completion Beewah will become a major regional rail interchange further increasing demand for housing locally, well beyond the 2015 expected population.

Homes need to be provided for these people, but also to meet the current housing crisis.

Where will this development most likely occur?

The answer would appear to be along the narrow growth corridor south of Beewah town centre, between the regional rail line and Steve Irwin Way, between 2 regional towns (Beewah and Glass House Mountains) where there has already been significant land use fragmentation and a gradual erosion of viable farming – which includes the subject site.

It can be argued this is already the intent – as most aptly demonstrated by terms of approval granted to the developers of the 200+ unit retirement facility north of Back Creek. The planner's report, unfortunately go into detail about the issue of the urban /rural interface. The nature of the approval creates a very hard urban edge – which is not often considered an appropriate way to interface with a rural area – unless it is considered as in transition too.....which makes sense from the perspective that this emerging corridor, south of Beewah, between Steve Irwin Way and the rail line, which has already experienced fragmentation and loss of agricultural uses – is a 'natural path for development to link through Glass House Mountains, notwithstanding its apparent inclusion within a non-rural inter-urban break.

In terms of the proposed veterinary clinic, while some demand for services may arise from local farmers - it is proposed in this location for the reason that there will be significant demand from future residents of the new retirement facility to the north who will, in general, not have access to private motor vehicles to visit other clinics.

9. Summary and conclusions

In the middle of a housing affordability emergency Councils are being asked to set aside their standard approach to considering innominate land uses for affordable housing – where there is justification and where the tests at Section 45 of the Planning Act are satisfied.

A clear need for more affordable housing within the vicinity of Beewah has been demonstrated, and the optimal site for such housing is in this location.

In terms of how circumstances have changed since SCRC adopted the 2015 planning scheme – little guidance is to be taken from any of the strategic policy sections of the planning scheme including the SEQQP, SPP and Council's own mapping.

It is clear Beewah has been extended to the south along a discrete and contained corridor – in the direction of Glass House Mountains, which includes the which the subject site; and the site in any event is useless as a rural property.

Concerns regarding character, amenity, landscape and environmental/ecological can all be responded to and appropriately managed by other existing planning scheme controls.

It is therefore submitted, SCRC is presented with a set of circumstances so similar to those considered in the reported Supreme Court decision concerning Section 45 of the Planning Act that giving in principle endorsement to the proposed uses makes sense, and is in the best interests of the community.....and once such endorsement is given, the landowner can move quickly into designing a compliance development proposal with the assurance that the application will not fail on the first hurdle but be considered on its full merits.