

Our Reference: A0019/23; S006-T00001

19 January 2023

Mr Ed Fernon

Email: [edward@freedomdevelopment.com.au](mailto:edward@freedomdevelopment.com.au)

Dear Ed,

### **207 Broulee Road, Broulee – review of scoping report**

Thank you for your approach to Council and your keen interest in investing in the Eurobodalla Shire, in particular your desire to achieve something innovative and sustainable.

Eurobodalla Shire Council (Council) has undertaken a pre-lodgement review of the scoping report and associated information which provides details in relation to the proposal by Brightlands Living Pty Ltd (the proponent) for land at 207 Broulee Road, Broulee, NSW 2537 (the site).

This review is based on the following information provided:

- Scoping Proposal prepared by PPD Planning Consultants, dated 14 September 2022
- Concept Design Explanatory Report (draft) prepared by Hatch Roberts Day, dated 30 November 2022
- Preliminary Agricultural Assessment prepared by Tremain Ivey Advisory, dated 15 September 2022
- Preliminary Ecological Advice prepared by Ecological Australia, dated 15 September 2022
- Broulee Housing Study Market Research prepared by Hill PDA Consulting, dated September 2022
- Bushfire Constraints Analysis prepared by Bushfire Protection Planning and Assessment Services Pty Ltd, dated 1 September 2022
- Site Suitability Analysis prepared by Earthrise, dated 9 September 2022; and
- Aboriginal and Historic Heritage Constraints Assessment prepared by Ecological Australia, dated 30 August 2022.

In reviewing the information provided, Council has had regard to the NSW Government's *Local Environmental Plan Making Guideline, September 2021* (LEP guideline), and considers whether the proposal has potential for strategic and site-specific merit, which would need to

be demonstrated before a planning proposal could be progressed.

## **1. Overview of the proposal**

In summary, the proposal seeks to amend the *Eurobodalla Local Environmental Plan 2012* (ELEP 2012) to allow for development of 'The Farm', which is described in the Scoping Proposal as 'an agrihood development on approximately 127 ha of land at 207 Broulee Road, Broulee' with agrihood defined as 'a type of planned community that integrates agriculture into a residential neighbourhood'.

The proposed amendments to ELEP 2012 are to:

- rezone part of the site zoned RU1 Primary Production to C4 Environmental Living, and
- include a site-specific local provision clause to allow residential development on the C4 zoned lands subject to:
  - o maximum dwelling density of eight dwellings per hectare, and
  - o minimum 50% of the C4 zoned lands being provided as communal open space (with a minimum dimension of ten metres).

A Master Plan is provided in the draft Concept Design Explanatory Report, which includes the following mix of uses:

- within the C2 Environmental Conservation zone:
  - o wetland, retained waterbodies and biodiversity corridor
- within the proposed C4 Environmental Living zone:
  - o residential accommodation
  - o village centre – including agrihood centre, child minding and co working, café and discovery centre
  - o farming area, market gardens, communal/bushtucker gardens, orchards, and agricultural plot (for use by the adjacent Carroll College)
  - o public park, and
  - o network of retained vegetation and revegetated open space, including shared paths/interpretative trail.

A major component of the Master Plan is the residential accommodation, which comprises:

- family hamlets - to make up approximately 35% of the total provision of residential accommodation and comprising a mix of three to five-bedroom dwellings, generally of one to two stories
- downsizer hamlets - to make up approximately 55% of the total provision of residential accommodation, aimed at over 55s, and comprising two and three-bedroom single storey dwellings, and

- key worker and affordable housing - to make up approximately 15% of the total provision of residential accommodation comprising a mix of two to four-bedroom dwellings.

Areas of the proposed residential accommodation are not provided. The Scoping Proposal specifies a maximum density of eight dwellings per hectare, which has the potential to generate either 1,016 dwellings (127\*8) or 504 dwellings (63.5\*8) if the 50% open space is not included in the housing density calculation.

It is noted that in the NSW Department of Planning and Environment's (DPE) draft *Strategies Assessment Guidance, South East and Tablelands Regional Plan 2041*, December 2022 (refer Section 3.1 below), that a large-scale planning proposal is defined as meeting at least one of the following criteria:

- generating a minimum 100 dwellings
- generating a minimum 100 jobs (subject to industry proposed)
- within a strategic centre, strategic cluster.
- within one kilometre of a strategic centre, strategic cluster.

As the proposal has the potential to generate more than 100 dwellings, it is considered to be a large-scale planning proposal.

## 2. Statutory planning

### 2.1 Relevant ELEP 2012 provisions

A summary of the relevant ELEP 2012 provisions relevant to the site and the proposal, includes:

- **Zoning:** Predominantly RU1 Primary Production and part C2 Environmental Conservation.
- **Maximum lot size:** 100 ha (corresponding to the RU1 zone)
- **Heritage:** Site of Mount Oldrey Homestead (local significance)
- **Acid sulfate soils:** Class 2
- **Wetlands:** Wetland, and
- **Bushfire-prone land:** vegetation Category.

### 2.2 Section 9.1 Ministerial Directions

Section 9.1 of the NSW *Environmental Planning and Assessment Act 1979* (EP&A Act) empowers the Minister for Planning to set statutory directions to planning authorities such as councils, which must be applied to guide strategic planning policies, including in relation to local environmental plans (LEP) and in planning proposals seeking to amend an LEP.

The following Direction is relevant to the proposal:

**Direction 9.2 - Rural Lands**

**Objective**

*The objectives of this direction are to:*

- (a) protect the agricultural production value of rural land,*
- (b) facilitate the orderly and economic use and development of rural lands for rural and related purposes,*
- (c) assist in the proper management, development, and protection of rural lands to promote the social, economic and environmental welfare of the State,*
- (d) minimise the potential for land fragmentation and land use conflict in rural areas, particularly between residential and other rural land uses,*
- (e) encourage sustainable land use practices and ensure the ongoing viability of agriculture on rural land,*
- (f) support the delivery of the actions outlined in the NSW Right to Farm Policy.*

**Application**

*This direction applies when a relevant planning authority prepares a planning proposal for land... that:*

- (a) will affect land within an existing or proposed rural or conservation zone (including the alteration of any existing rural or conservation zone boundary) or*
- (b) changes the existing minimum lot size on land within a rural or conservation zone.*

**Note:** *Reference to a rural or conservation zone means any of the following zones or their equivalent in a non-Standard LEP: RU1, RU2, RU3, RU4, RU6, C1, C2, C3, C4.*

**Direction 9.2**

*(1) A planning proposal must:*

- (a) be consistent with any applicable strategic plan, including regional and district plans endorsed by the Planning Secretary, and any applicable local strategic planning statement*
- (b) consider the significance of agriculture and primary production to the State and rural communities*
- (c) identify and protect environmental values, including but not limited to, maintaining biodiversity, the protection of native vegetation, cultural heritage, and the importance of water resources*
- (d) consider the natural and physical constraints of the land, including but not limited to, topography, size, location, water availability and ground and soil conditions*
- (e) promote opportunities for investment in productive, diversified, innovative and sustainable rural economic activities*

*(f) support farmers in exercising their right to farm*

*(g) prioritise efforts and consider measures to minimise the fragmentation of rural land and reduce the risk of land use conflict, particularly between residential land uses and other rural land use*

*(h) consider State significant agricultural land identified in chapter 2 of the State Environmental Planning Policy (Primary Production) 2021 for the purpose of ensuring the ongoing viability of this land*

*(i) consider the social, economic and environmental interests of the community.*

### **Consistency**

*A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Planning Secretary (or an officer of the Department nominated by the Secretary) that the provisions of the planning proposal that are inconsistent are:*

*(a) justified by a strategy approved by the Planning Secretary and is in force which:*

*i. gives consideration to the objectives of this direction, and*

*ii. identifies the land which is the subject of the planning proposal (if the planning proposal relates to a particular site or sites), or*

*(b) is of minor significance*

This Direction is relevant to the proposal as it would affect land within a rural zone. Under this Direction, the proposal must be consistent with any applicable strategic plan, including regional and district plans endorsed by the Planning Secretary, and any applicable local strategic planning statement. As demonstrated in Section 3.1 and Section 3.2 below, the proposal is inconsistent with the current *South East and Tablelands Regional Plan 2036*, the draft *South East and Tablelands Regional Plan 2041* (including the assessment guidance) and the *Eurobodalla Local Strategic Planning Statement*.

The planning proposal may be inconsistent with the terms of this Direction if the provisions of the planning proposal that are inconsistent are justified by a strategy approved by the Planning Secretary or if is of a minor significance. In the absence of such a strategy, and given that the proposal is not of minor significance (noting its potential to provide >500 residential dwellings), compliance with this Direction must be adhered to. The proposal therefore is inconsistent with the requirements of Section 9.1 of the EP&A Act and cannot be supported.

### **3. Strategic merits of the proposal**

In determining whether the proposal has strategic merit, Council must consider whether it aligns with the relevant NSW strategic planning framework, which, for the site and the proposal, includes the:

- NSW Government's *South East and Tablelands Regional Plan 2036* (Region Plan) and the *Draft South East Tablelands Regional Plan 2041* (Draft Region Plan)
- Eurobodalla Local Strategic Planning Statement 2020-2040 (LSPS)
- Eurobodalla Rural Lands Strategy 2016 (Rural Lands Strategy), and
- Eurobodalla Settlement Strategy 2006-2031 (Settlement Strategy).

Council has reviewed the information provided in the context of the aims and objectives of each strategic plan, and for the reasons set out below, does not consider that the proposal demonstrates strategic merit.

### 3.1 Region Plan and Draft Region Plan

The plans set the framework, vision and direction for strategic planning and land-use planning for future needs for housing, jobs, infrastructure, a healthy environment and connected communities.

Under this framework, 'strategies' are included which identify the planning matters for consideration (ie, policy positions) set at a regional level, which guide:

- strategic planning (including local strategic planning statements)
- local plans (including local environmental plans (LEPs) and development control plans [DCPs]), and
- state agency planning.

Strategic planning and local plans also include planning proposals for the purposes of local planning directions under Section 9.1 of the EP&A Act (refer to Section 2.2 above).

Both plans acknowledge the growing and ageing population in the region and identify the need for more diverse and affordable housing choices and for a housing pipeline to reflect changing household composition. However, the plans aim to ensure that housing supply is provided in appropriate locations (Objective 17, Draft Region Plan), including for the focus of growth to be on existing strategic centres (Strategy 17.2, Draft Region Plan), referring specifically to the Batemans Bay strategic cluster, which includes the strategic centres of Moruya and Batemans Bay. The potential for greenfield development is identified around Moruya (alongside access to the future bypass and the new hospital), and the potential for higher density and infill housing opportunities are identified for Batemans Bay, particularly around the CBD. The plans do not identify the potential for new housing development outside of these areas, and the proposal is therefore inconsistent with these objectives and strategies of the plans.

The Draft Region Plan (Objective 19) identifies that rural residential subdivision can result in the fragmentation of rural and/or agricultural land, affecting the value of land and the ability for agricultural practices to amalgamate. This is consistent with the aims of the Rural Lands Strategy and is considered further in Section 3.4 below. Furthermore, Strategy 19.1 of the Draft Region Plan states that new rural residential development can only be allowed where it has been identified in a local strategic plan, prepared by Council and endorsed by DPE.

As detailed in this letter review, strategic merit for the proposal has not been established in any endorsed strategy.

Further to the above, Council is currently working with the department on Action 15: “Prepare a place strategy for the Batemans Bay Strategic Cluster to coordinate strategic planning and infrastructure”. Any future areas for settlement growth and land release will be determined through this process.

### 3.2 Eurobodalla Local Strategic Planning Statement (LSPS)

The LSPS sets out a 20-year vision for land-use planning in the Eurobodalla local government area (LGA) until 2040. Whilst the LSPS identifies that there will be a continued demand for single dwelling houses and a forecast growth in one and two person households, this forecast demand is intended to be met by consolidating development within existing town and village centres. Specifically, the LSPS identifies that with an ageing population and low vehicle ownership, there will be an increased need to live in highly accessible locations where goods and services are within walking distance to residential areas and people have alternative transport options. The town centres of Batemans Bay, Moruya and Narooma are identified as being able to facilitate increased density and infill that best caters for an ageing population.

The LSPS also acknowledges that there are large areas of residential zoned land that have not been developed (eg, the Dalmeny land release area, South Moruya, the South Narooma LRA, current approved developments at Rosedale and Broulee, and the infill potential in the Greater Batemans Bay area, and more broadly across all residential zones in Eurobodalla) and includes actions to ensure the coordinated development of these areas.

The proposal is inconsistent with the LSPS as it proposes substantial residential development outside of existing town and village centres and is not within a designated land release or growth area. The proposal does not provide for alternative transport options or align infrastructure delivery with planned growth. For these reasons, the proposal is inconsistent with the following LSPS planning priorities:

- Planning priority 3 – consolidate development within town and village centres
- Planning priority 8 – align local infrastructure delivery with planned growth
- Planning priority 9 – develop highly accessible town and activity centres.

### 3.3 Rural Lands Strategy

The Rural Lands Strategy was adopted by Council in February 2016. It recognises that the rural lands of the Eurobodalla LGA are a vital resource and sets a vision and action plan for 20 years, until 2036.

The strategy considers that the RU1 Primary Production zone is appropriate to define the broadscale areas of rural Eurobodalla, noting that of 1,730 landholdings in the RU1 zone, only 7% are over 100 ha. The strategy recognises that these larger properties have prospects for commercial agriculture and aims to minimise their fragmentation, especially where they contain productive agricultural land. Minimising fragmentation also aims to control servicing

burdens like road extensions, maintenance, and renewal, as well as to preserve options for the future (should the terms of trade for agriculture go more into an era of long-term improvement and growth). The current RU1 Primary Production zoning and the minimum 100 ha lot size over the majority of the site reflects the intent of the strategy to maintain its general rural use within a large land holding.

The proposal would result in the fragmentation of the site and would be inconsistent with the aims of the Rural Land Strategy. For this reason, the proposal would also be inconsistent with Objective 19 of the Draft Regional Plan, as detailed in Section 3.1 above.

#### 3.4 Eurobodalla Settlement Strategy 2006-2031

The Settlement Strategy provides a framework for a sustainable pattern of settlement within the Eurobodalla LGA until 2031. A key function of the Settlement Strategy was to inform the application of land-use zones and specific provisions that were included in ELEP 2012, and which provided for the current zoning and minimum lot size provision of the site. These remain relevant to the site, noting that the Settlement Strategy provides a framework until 2031

Broulee is identified as a coastal village in the Settlement Strategy, which states:

*'Key issues currently facing coastal villages include development pressure on land that separates settlements causing ribbon settlement stretching along the coastal edge and along the main access road, and large scale tourist developments and subdivisions that erode the compact footprint and natural setting. Large new buildings can detract from the settlements' relationship to geographic location, views and vistas of the surrounding natural environment.'*

The proposal would result in the development of a large 127 ha site in close proximity (approximately 0.5 km) to the existing coastal village of Broulee, with frontage to Broulee Road, the main access road to Broulee from the west. This has the potential to erode the compact footprint and natural setting of Broulee and would be inconsistent with the Settlement Strategy.

#### 3.5 Draft Local Housing Strategy

Council is working to deliver a draft Local Housing Strategy for public exhibition in 2023, which will identify the demand for housing in the Eurobodalla LGA for a 20-year period. Early analysis suggests the capacity of existing residential zoned land to provide homes on both greenfield and infill sites is sufficient to meet future expected housing demand. This is consistent with the strategic plans considered above that support investigating opportunities for infill housing development to provide more dwellings and the required diversity in housing type. There is no evidence to suggest rezoning agricultural land for residential purposes needs be considered to meet expected housing demand. See also comment regarding the Batemans Bay Strategic Cluster Place Strategy Project.

### **4. Site specific merits of the proposal**

In determining whether the proposal has site-specific merit, Council must consider whether



the proposal adequately identifies the potential environmental, social, and economic impacts, in the context of the following assessment criteria:

- the natural environment on the site to which the proposal relates and other affected land (including known significant environmental areas, resources or hazards)
- existing uses, approved uses, and likely future uses of land in the vicinity of the land to which the proposal relates, and
- services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangements for infrastructure provision.

Taking each in turn:

#### 4.1 The natural environment

The proponent has identified potential hazards (ie, bushfire) and environmental constraints (ie, heritage and biodiversity) that relate to the site, and has provided preliminary environmental assessments demonstrating how these could be addressed.

#### 4.2 Existing, approved, and future uses

As detailed in Section 3, there is no current or proposed strategic plan or policy that supports the proposal, which if allowed, would set an undesirable precedent for any future uses in the vicinity of the site or the wider Eurobodalla LGA. For this reason, Council does not consider that the proposal has site-specific merit.

#### 4.3 Services and infrastructure

As detailed in Section 3.2, the proposal does not provide for alternative transport options or align infrastructure delivery with planned growth. Further, all aspects of service would need to be addressed through any proposal. At this stage Council does not consider that the proposal has site-specific merit.

### 5. Closing

As detailed in this review, Council does not consider that the proposal has strategic or site-specific merit and does not meet the statutory requirements of Section 9.1 of the EP&A Act. For these reasons, the proposal cannot be supported at this time.

Council would advise that the proposal be deferred in the short term to await the outcomes of the Place Strategy for the Batemans Bay Strategic Cluster. There will be opportunities for input into that process to ensure the efficient coordination of strategic planning and infrastructure. Any future areas for settlement growth and land release will be determined through this process.

Should you wish to discuss any of the matters raised, then please do not hesitate to contact the undersigned via email at [Elizabeth.Rankin@esc.gov.au](mailto:Elizabeth.Rankin@esc.gov.au).

Yours sincerely

A handwritten signature in blue ink, appearing to be 'ER', with a long horizontal flourish extending to the right.

Elizabeth Rankin  
**Divisional Manager Strategy and Sustainable Growth**