



New South Wales Government
Independent Planning Commission

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310 Terrigal Drive, Terrigal Gateway Determination Review

PP-2023-1899

Advice Report

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1. Introduction

1. On 14 May 2025, the NSW Independent Planning Commission (**Commission**) received a referral from the NSW Department of Planning, Housing and Infrastructure (**Department**) requesting its advice on the merits of a Gateway Determination review request for planning proposal PP-2023-1899 (**Planning Proposal**), in accordance with section 2.9(1)(c) of the *Environmental Planning and Assessment Act 1979* (**EP&A Act**).
2. The Gateway Determination review request arises from the decision made on 17 December 2024 by the delegate of the Minister for Planning and Public Spaces (**Minister**), who determined that the Planning Proposal should not proceed. In response, LoftusLane Capital Partners Pty Ltd (the **Proponent**) requested a review of this decision.
3. The Department has requested that the Commission review the Gateway Determination and provide advice on the merits of the review request, including a clear and concise recommendation to the Minister’s delegate on whether the Gateway Determination should be altered.
4. Andrew Mills, Chair of the Commission, appointed Juliet Grant (Chair) and Simon Smith to constitute the Commission Panel for the purpose of exercising its functions with respect to this request for advice.

2. The Planning Proposal

5. The intent of the Planning Proposal is to amend the *Central Coast Local Environmental Plan 2022* (**CCLEP 2022**) to permit ‘retail premises’ as an additional use and increase the permissible height of buildings and floor space ratio controls for land at 310 Terrigal Drive, Terrigal (the **Site**), as described in **Table 1** below.

Table 1 – Amendments proposed to the CCLEP 2022 (source: Department’s Gateway Determination Report)

Control	Current	Proposed
Zoning	R1 General Residential	No change
Height of buildings	8.5 metres	25 metres
Floor space ratio	0.5:1 Clause 4.4A (4)(a) and (b) permits FSRs of 0.6:1 or 0.7: for residential flat buildings or multi dwelling housing with basement parking on sites less than or greater than 1000sqm respectively.	1.3:1
Minimum lot size	500m ²	No change
Schedule 1 Additional permitted uses	N/A	Permit 'retail premises' with a maximum GFA of 150m ² as an additional permitted use.
Number of dwellings	0	Approximately 38 dwellings

6. The background of the Planning Proposal and Gateway Determination Review is set out at **Appendix B**.

7. The Site is currently zoned for residential development. The Commission notes that the existing controls would yield approximately 34 apartments (Department’s Justification Assessment, page 9), and therefore the yield under the existing conditions is not zero, as reflected in the table above.

3. The Commission’s Consideration

8. In preparing this advice, the Commission has considered the material set out in **Appendix C**.
9. The Department’s determination that the Planning Proposal should not proceed was based on its assessment that the Planning Proposal did not satisfy matters of strategic and site-specific merit. The Department provided the following three reasons for its decision in its Gateway Review Justification Assessment:
- **Reason 1:** *The proposal has not demonstrated sufficient strategic merit as it does not give effect to the Central Coast Regional Plan 2041 and has not provided sufficient justification to demonstrate consistency with:*
 - *Objective 5: Plan for ‘nimble neighbourhoods’, diverse housing and sequenced development*
 - *Objective 7: Reach net zero and increase resilience and sustainable infrastructure*
 - *Narara District Planning Priority 5: Identify appropriate urban expansion opportunities to ensure a sufficient supply of safe, diverse and affordable housing.*
 - **Reason 2:** *The proposal has not adequately demonstrated site-specific merit in relation to flood risk and has not provided sufficient justification to demonstrate consistency with Section 9.1 Ministerial Direction 4.1 Flooding.*
 - **Reason 3:** *The proposal has not adequately demonstrated that the proposal would result in improved social and economic outcomes.*
10. The Commission has considered the views of the Proponent, Council, and the Department with regard to each of these reasons.
11. The Commission notes that the Planning Proposal was considered by Central Coast Council (**Council**) at its Ordinary Council meeting on 26 March 2024 where Council resolved to endorse the Proposal.

3.1 Land use

12. The Site is currently zoned R1 General Residential, and as such, residential development (with a maximum building height of 8.5 metres and FSR of 0.5:1) is a permissible land use on the Site.
13. The Site is unoccupied by buildings and is vegetated with grass, shrubs and trees. It is surrounded by Terrigal Drive to the north with residential development beyond, Charles Kay Drive to the west with the Terrigal Ambulance Station and sporting fields beyond, mature trees to the south and south-west, and an existing third order watercourse to the east (within 40 metres).
14. The Proponent states that the concept design demonstrates the Site can accommodate increased density without adversely impacting on the environmental qualities of the locality or the amenity of nearby residential properties (Justification Assessment, page 8).

15. Council and the Proponent are of the view that the Planning Proposal will enable the development of a 6-storey residential building, providing medium density housing in proximity to the Terrigal local centre, which would align with State-led policy to address housing supply shortages.
16. The Commission notes that the developable area of the Site has been identified in response to the Site's characteristics, and to minimise impacts to vegetation and from traffic and flooding. It is also noted that development of the Site would have no overshadowing impacts to surrounding landowners and minimal visual or privacy impacts.

Central Coast Regional Plan 2041

17. Council and the Proponent are of the view that the Planning Proposal aligns with the objectives of the Regional Plan because the proposal seeks to:
 - deliver a mix of residential apartments and a retail premise in a prominent location at the corner of two main connecting roads in Terrigal and located within cycling distance from Terrigal Town Centre, thereby supporting the creation of an accessible 15-minute neighbourhood (*Objective 5*);
 - facilitate positive environmental outcomes by rehabilitating the creek along the Site's south-eastern boundary (which is currently an overgrown and low-quality fluvial system) and providing development on a Site that has no identified threatened flora species or significant fauna habitat (*Objective 7*); and
 - providing infill development in an accessible location on underutilised land to provide increased housing supply in the form of apartment typologies, thereby improving housing choice (*Narara District Planning Priority 5*).
18. The Department acknowledges that the proposal has the potential to increase the supply and diversity of housing in the Central Coast LGA, however it considers that, due to the risks from natural hazards, the proposal is misaligned with Objectives 5, 7 and the priorities for growth in the Narara District (Justification Assessment, page 13).
19. The Commission finds that the proposal would achieve the Objectives of the Regional Plan and that the inconsistencies identified by the Department can be appropriately managed through design considerations, including managing flood risk by ensuring any future building is designed around flood freeboard levels and ensuring that residents can shelter-in-place.

Local Strategies

20. The Department states that the proposal does not align with the *Local Strategic Planning Statement: The Framework for a Growing Central Coast Region (Interim Statement – August 2020) (LSPS)*. The LSPS prioritises housing supply within centres and in low-risk areas. The Department considers the Site to be located outside of an existing centre (approximately 4.7km from Erina strategic centre and 2.1km from Terrigal centre) and significantly flood affected.
21. The Department states that the proposal does not align with the *Central Coast Local Housing Strategy (May 2024) (LHS)* for the same reasons – that it seeks to facilitate housing development on land that is vulnerable to natural hazard risk and outside existing centres. The Department notes that the LHS prioritises existing centres in less constrained locations as more optimal locations for residential growth.
22. The Commission has been asked for its advice on the Gateway Determination in respect of the present Planning Proposal. Whether or not other locations within the local area would provide more optimal sites for residential development is not determinative of whether the Planning Proposal on the subject Site has merit to proceed or not.

23. The Department states that *One Central Coast - Revised Community Strategic Plan (CSP) 2018-2028 (February 2022) (CSP)* recognises the vulnerability of the area to climate change impacts and highlights the need to ensure safety in extreme weather events. It is not satisfied that the proposal is consistent with the CSP in this regard.
24. The Commission acknowledges the Department's views with regard to the LSPS, LHS and CSP, however the Commission considers that the Site can be sensitively developed in a way that maintains environmental values and ensures risks from natural hazards (namely flood and bushfire risks) can be appropriately managed. The Commission finds the Site to be an appropriate location to increase supply and diversity of housing because it is within 2.1km of Terrigal town centre and is surrounded by existing social infrastructure.

3.2 Flooding

25. The Planning Proposal is supported by a Flood Impact & Risk Assessment (**FIRA**), which has been agreed to and endorsed by Council (Department's Justification Assessment, page 10). The FIRA identifies that:
- during the 1% AEP flood event, the potential future development would not present changes to the risk level on the Site and surrounds (however shelter in place would be required for approximately 44 minutes);
 - during the PMF flood event, the potential future development would not present changes to risk level on the Site and surrounds (however shelter-in-place would be required for approximately 74 minutes);
 - peak flood behaviour subsides in less than two hours during all major flood events up to and including the PMF;
 - the Site is considered a H4 hazard category for both pre and post development at 1% AEP, and the hazard category increases to H5 in the PMF for both pre and post development; and
 - a shelter-in-place strategy has been supported as there is no need to evacuate during a flood.
26. The Department is of the view that the Planning Proposal has not adequately demonstrated site-specific merit in relation to flood risk and has not provided sufficient justification to demonstrate consistency with Section 9.1 Ministerial Direction *4.1 Flooding*. The Commission has considered Ministerial Direction *4.1 Flooding* in **Table 2**.

Consistency

27. Direction *4.1 Flooding* includes a note about consistency which states that a planning proposal may be inconsistent with a direction only if the planning proposal authority can satisfy the Planning Secretary (or their nominee) that:
- the planning proposal is in accordance with a floodplain risk management study or plan adopted by the relevant council in accordance with the principles and guidelines of the *Floodplain Development Manual 2005*; or
 - where there is no council adopted floodplain risk management study or plan, the planning proposal is consistent with the flood study adopted by the council prepared in accordance with the principles of the *Floodplain Development Manual 2005*; or
 - the planning proposal is supported by a flood and risk impact assessment accepted by the relevant planning authority and is prepared in accordance with the principles of the *Floodplain Development Manual 2005* and consistent with the relevant planning authorities' requirements; or

- the provisions of the planning proposal that are inconsistent are of minor significance as determined by the relevant planning authority.

Direction 4.1 Flooding

28. For the reasons set out in **Table 2**, the Commission finds that the Planning Proposal’s inconsistency with Direction 4.1 can be sufficiently justified, as the Commission is satisfied that the Planning Proposal is supported by a FIRA that has been endorsed by Council and that the provisions of the Planning Proposal that are inconsistent are of minor significance.

Table 2 – Consideration of Section 9.1 Ministerial Direction 4.1 Flooding

Direction 4.1 Flooding	Commission’s consideration
<p>1) A planning proposal must include provisions that give effect to and are consistent with:</p> <ul style="list-style-type: none"> a) the NSW Flood Prone Land Policy (FPLP), b) the principles of the Floodplain Development Manual 2005, c) the Considering flooding in land use planning guideline 2021, and d) any adopted flood study and/or floodplain risk management plan prepared in accordance with the principles of the Floodplain Development Manual 2005 and adopted by the relevant council. 	<p>The Department considers the Planning Proposal to be inconsistent with Direction 4.1. The Department did not specifically address Direction 4.1(1) or the Planning Proposal’s consistency with the items within Direction 4.1(1), however concluded that the Planning Proposal had not provided sufficient justification to demonstrate consistency with the Direction (Department’s Gateway Determination Report, page 16).</p> <p>Council considers that the flood impacts resulting from the potential future development are generally isolated to the Site or the adjoining watercourse, and that the minor increase in peak flood surface levels to Terrigal Drive (12mm increase) is acceptable.</p> <p>The Commission has considered Direction 4.1(1) below.</p> <p><u>4.1(1)(a) and 4.1(1)(b)</u>: The FPLP was set out in the <i>Floodplain Development Manual 2005</i>. The 2005 manual was replaced in 2023 by the <i>Flood Risk Management Manual 2023</i>, with the FPLP now set out in the 2023 manual.</p> <p>The Proponent’s FIRA considered the Flood Risk Management Manual 2023 (FRMM) (Proponent’s FIRA, page 6).</p> <p>The primary objective of the FPLP is to “reduce the impacts of flooding and flood liability on communities and individual owners and occupiers of flood prone property, and to reduce private and public losses resulting from floods, utilising ecologically positive methods wherever possible. In doing so, community resilience to flooding is improved” (FRMM). The FPLP sets out how to achieve this by adopting a merit-based approach for all developments in the floodplain, taking into account social, economic and ecological factors, and limiting the potential for flood losses in all areas proposed for development by applying ecologically sensitive planning and development controls.</p> <p>The FRMM outlines 10 principles for flood risk management to achieve its vision.</p>

The Commission is satisfied that the Planning Proposal is consistent with Direction 4.1(1)(a) and 4.1(1)(b) as it achieves the primary objective of the FPLP. The Commission finds development on the Site can be designed to balance social, economic, ecological and flooding considerations, with the flooding risk considered to be acceptable for the reasons outlined below in this table. Additionally, the Commission considers the proposal to be consistent with the vision of the FRMM and its principles as it has considered the natural flood functions of the Site and will manage flood risk effectively.

4.1(1)(c): the ‘*Considering flooding in land use planning guideline 2021*’ (**2021 Guideline**), provides advice to councils about land use planning for flood-impacted land and areas where flood-related development controls should apply.

As set out in the 2021 Guideline, the Commission has considered regional, metropolitan and district plans, local strategic planning statements and environmental planning instruments. For the reasons outlined in **section 3.1** above, the Commission is satisfied that the Planning Proposal is consistent with Direction 4.1(1)(c) as it is consistent with the requirements of these plans, statements and instruments and the Commission is satisfied that the flood related development controls of a future development application are capable of being complied with.

4.1(1)(d): the Proponent’s FIRA considered the Council’s catchment-wide *Coastal Lagoon Catchments Overland Flow Study (2020)* (Department’s Gateway Determination Report, page 15) which was prepared in accordance with the *Floodplain Development Manual 2005*. The results of the Council’s flood study were relied upon for assessment and comparison to inform the Proponent’s site-specific study (Proponent’s FIRA, page 10). The Department notes that Council’s mapping indicates higher flood hazards than the Proponent’s FIRA, however the Proponent advised that Revision 3 of the FIRA demonstrates that the flood hazard categorisation has been correlated to Council’s flood study (Proponent’s letter dated 2 November 2025).

The Commission notes that Council has supported the Planning Proposal, which included a Floodplain Risk Management Manual, and did not raise any concerns with its consistency with Council’s flood study.

The Commission is satisfied that the Planning Proposal is consistent with Council’s catchment-wide flood study and Direction 4.1(1)(d).

<p>2) A planning proposal must not rezone land within the flood planning area from Recreation, Rural, Special Purpose or Conservation Zones to a Residential, Employment, Mixed Use, W4 Working Waterfront or Special Purpose Zones.</p>	<p>The Planning Proposal does not seek to change the existing land use zoning.</p>
<p>3) A planning proposal must not contain provisions that apply to the flood planning area which:</p> <ol style="list-style-type: none"> a) permit development in floodway areas, b) permit development that will result in significant flood impacts to other properties, c) permit development for the purposes of residential accommodation in high hazard areas, d) permit a significant increase in the development and/or dwelling density of that land, e) permit development for the purpose of centre-based childcare facilities, hostels, boarding houses, group homes, hospitals, residential care facilities, respite day care centres and seniors housing in areas where the occupants of the development cannot effectively evacuate, f) permit development to be carried out without development consent except for the purposes of exempt development or agriculture. Dams, drainage canals, levees, still require development consent, g) are likely to result in a significantly increased requirement for government spending on emergency management services, flood mitigation and emergency response measures, which can include but are not limited to the provision of road infrastructure, flood mitigation infrastructure and utilities, or h) permit hazardous industries or hazardous storage establishments where hazardous materials cannot be effectively contained during the occurrence of a flood event. 	<p><u>4.1(3)(a)</u>: In its Gateway Determination Report (page 16), the Department considers the proposal to contain provisions which seek to permit a significant increase in the potential density of development on a site located in a floodway area.</p> <p>The Proponent states that the development is proposed wholly within the “flood fringe” and “flood storage area”, and therefore the building footprint is located wholly outside of the floodway.</p> <p>The Commission notes that floodway is defined by the <i>Flood Risk Management Manual 2023</i> as “<i>areas of the floodplain which generally convey a significant discharge of water during floods and are sensitive to changes that impact flow conveyance. They often align with naturally defined channels or form elsewhere in the floodplain</i>”.</p> <p>The Commission is satisfied that the building footprint within the Planning Proposal (pages 125 to 135 of the FIA) would be located outside of the floodway area, with potential for only minor encroachments. The Commission also notes that the Site’s existing zoning currently permits residential development.</p> <p>The Commission is satisfied that the Planning Proposal can provide for development outside of the floodway, and that any minor encroachments would not result in increased risk on the Site as:</p> <ul style="list-style-type: none"> • the period of inundation would be limited to two hours or less during all major flood events, including the PMF; • there is no need to evacuate during a flood; • a shelter-in-place strategy is supported; and • the development would not have significant impacts on adjoining properties. <p><u>4.1(3)(b)</u>: The Department does not raise any concerns with the Planning Proposal resulting in significant flood impacts to other properties.</p> <p>The Proponent’s FIRA concludes that the proposed development “<i>can be constructed with negligible impact on the flooding behaviour in the close vicinity of the Site and elsewhere in the floodplain nor having impact on upstream and downstream properties</i>” (Proponent’s FIRA, page 56).</p>

Council, in its report dated 26 March 2024, outlined that the impacts resulting from the potential future development would be generally isolated to the site or the adjoining RE1 zoned watercourse.

The Commission is satisfied that the Planning Proposal is consistent with Direction 4.1(3)(b) as it would not result in significant flood impacts to other properties.

4.1(3)(c): The Commission notes that the definition of ‘High hazard’ is included within the *Floodplain Development Manual 2005*, however the 2023 manual, which replaced the 2005 manual, does not include a definition.

‘High hazard’ is defined as “*possible danger to personal safety; evacuation by trucks difficult; able-bodied adults would have difficulty in wading to safety; potential for significant structural damage to buildings*”.

The Department notes that CPHR advised there were residual risks associated with increasing the population living in a high hazard (H5 during PMF) location (Department’s Justification Assessment, page 15).

The Commission considers the Site could be defined as high hazard as able-bodied adults would have difficulty in wading to safety, and if adopting the Department’s view, the Site is impacted by floodwaters categorised as being H5 during PMF.

However, the Commission finds the risk to safety during evacuation to have been mitigated through the proposed shelter-in-place strategy, and the Planning Proposal has adequately demonstrated mitigation of flood impacts due to H5 flood hazard during the PMF through suitable building design and materials supported by a qualified structural engineer, a Flood Emergency Response Plan and appropriate siting of the building footprint on the Site.

The Commission considers the Planning Proposal to be located in a high hazard area if adopting the definition of high hazard being H5 during a PMF. However, the Commission is satisfied that the Planning Proposal is justifiably inconsistent with Direction 4.1(3)(c) as the inconsistency is minor because the period of inundation would be limited to two hours or less during all major flood events, including the PMF, and the impacts of the Planning Proposal have been adequately mitigated.

4.1(3)(d): The Commission notes the Department's comment in its Justification Assessment (page 16) that there is no measure of what a 'significant increase in density' means under the Directions, and it's view that the density on the Site that could be achieved by the Planning Proposal (including the calculation of bonus FSR under the Housing SEPP) is not an insignificant increase in density.

The Proponent contests the Department's assessment has failed to recognise the existing capacity of the land under the current planning controls. It states that under the current controls, the Site could yield 34 apartments, while the proposed controls could yield 48 apartments, resulting in an additional 14 apartments "in a vertical high-rise with all units located above the flood freeboard levels" (Justification Assessment, page 9). Therefore the Proponent considers the proposal will not result in a significant increase in density of land in the flood area.

In the absence of guidance on what a 'significant increase in density' means in this context, the Commission considers that the intent of the Direction is to avoid increasing exposure of people to flood risks. The Commission finds that the design of a potential future development outcome would be significantly safer than a permissible development (for example, low-level townhouses) and therefore reduces the risk of flood impacts to its residents. The Commission therefore considers the proposal to align with the intent of this requirement.

4.1(3)(e): The Planning Proposal does not permit development of centre-based childcare facilities, hostels, boarding houses, group homes, hospitals, residential care facilities, respite day care centres and seniors housing and is consistent with Direction 4.1(4)(e).

4.1(3)(f): The Planning Proposal does not seek to permit development to be carried out without development consent except for the purposes of exempt development or agriculture and is consistent with Direction 4.1(3)(f).

4.1(3)(g): The Commission finds that, given that a shelter-in-place strategy is supported and there is no need to evacuate during a flood, the Planning Proposal would not result in an increased requirement for government spending on emergency management (4.1(3)(g)).

4.1(3)(h): The Planning Proposal does not seek to permit hazardous industries or hazardous storage establishments where hazardous materials cannot be effectively contained during the occurrence of a flood event and is consistent with Direction 4.1(3)(h).

<p>4) A planning proposal must not contain provisions that apply to areas between the flood planning area and probable maximum flood to which Special Flood Considerations apply which:</p> <ol style="list-style-type: none"> permit development in floodway areas, permit development that will result in significant flood impacts to other properties, permit a significant increase in the dwelling density of that land, permit the development of centre-based childcare facilities, hostels, boarding houses, group homes, hospitals, residential care facilities, respite day care centres and seniors housing in areas where the occupants of the development cannot effectively evacuate, are likely to affect the safe occupation of and efficient evacuation of the lot, or are likely to result in a significantly increased requirement for government spending on emergency management services, and flood mitigation and emergency response measures, which can include but not limited to road infrastructure, flood mitigation infrastructure and utilities. 	<p>The Commission is not able to determine if the Planning Proposal would meet section 5.22(2) (Special Flood Considerations) of the CCLEP 2022 as this would be determined by the consent authority for a development application. Notwithstanding, the Commission has considered Direction 4.1(4).</p> <p>The Commission is satisfied that any potential inconsistencies with Direction 4.1(4)(a) through potential minor encroachments of the development footprint into the floodway area would be of minor significance.</p> <p>As set out above, the Commission is satisfied that the Planning Proposal would not result in significant flood impacts to other properties, consistent with Direction 4.1(4)(b). In the absence of guidance on what a 'significant increase in density' means, the Commission considers that the Planning Proposal would allow for a development that is significantly safer than a permissible development during a flood event and therefore reduces the risk of flooding to its residents.</p> <p>The Planning Proposal does not seek to permit development of centre-based childcare facilities, hostels, boarding houses, group homes, hospitals, residential care facilities, respite day care centres and seniors housing and is consistent with Direction 4.1(4)(d).</p> <p>The Commission finds that, given that a shelter-in-place strategy is supported and there is no need to evacuate during a flood, the Planning Proposal would not affect the safe occupation of the Site (4.1(4)(e)) or result in an increased requirement for government spending on emergency management (4.1(4)(f)).</p>
<p>5) For the purposes of preparing a planning proposal, the flood planning area must be consistent with the principles of the Floodplain Development Manual 2005 or as otherwise determined by a Floodplain Risk Management Study or Plan adopted by the relevant council.</p>	<p>The Commission finds the Planning Proposal to be consistent with the principles of the <i>Flood Risk Management Manual 2023</i> as it has considered the natural flood functions of the Site and will manage flood risk effectively as discussed above. The Commission finds that the Planning Proposal is consistent with Direction 4.1(5).</p>

29. For the reasons set out above, the Commission finds that the Planning Proposal does have site-specific merit and the flood risk is acceptable because:

- the period of inundation would be limited to two hours or less during all major flood events, including the PMF;
- a future development will be able to support shelter-in-place (including during a PMF event where shelter-in-place would be required for approximately 74 minutes);
- a future development would be able to provide benefits to surrounding land holders as a refuge during a flood event;
- there would be no significant flood impacts to surrounding properties;

- the design of the potential future development would be significantly safer than a permissible development (for example, low-level townhouses) and therefore reduces the risk of flood impacts to its residents;
 - no increase in government spending would be required, including during a flood event where shelter-in-place is required because the period of inundation would be limited to two hours or less (in line with the *Shelter in place guideline for flash flooding*); and
 - the inconsistencies with Direction 4.1 are of minor significance and can be sufficiently justified.
30. The Panel further advises that this proposal demonstrates an approach to reducing flood risk that may be useful at other sites impacted by current and potentially increased risks of flooding due to climate change. The potential future development offers a resilient design that will protect residents and property, without impacting on other sites or imposing additional burdens on State emergency services. The Panel notes that flooding impacts will have a short duration at the subject Site and therefore evacuations are very unlikely to be needed.

3.3 Section 9.1 Ministerial Directions

31. The Commission has given consideration to the Section 9.1 Ministerial Directions set out in Table 7 of the Department's Gateway Determination Report.
32. For the reasons set out in **Table 3** below, the Commission finds that the Planning Proposal is consistent with the other Section 9.1 Ministerial Directions, with the exception of Direction 1.4 and Direction 4.1 which the Commission finds the Planning Proposal is justifiably inconsistent with.

Table 3 – Consideration of relevant Section 9.1 Ministerial Directions

Directions	Commission's consideration
1.1 Implementation of Regional Plans	<p>The Department does not specifically address Direction 1.1 in its Gateway Determination Report, however the Department did consider the Planning Proposal's alignment with the Regional Plan and the Commission considers Direction 1.1 to be relevant to the Planning Proposal.</p> <p>The Department is not satisfied that the Planning Proposal adequately gives effect to the Regional Plan.</p> <p>For the reasons set out in section 3.1 above, the Commission finds the Planning Proposal is justifiably inconsistent with Direction 1.1 as the extent of any inconsistencies is of minor significance and the Commission considers the Planning Proposal achieves the intent of the Regional Plan.</p>
1.3 Approval and Referral Requirements	<p>The Department does not specifically address Direction 1.3 in its Gateway Determination Report, however the Commission considers Direction 1.3 to be relevant to the Planning Proposal.</p> <p>The Commission considers the Planning Proposal to be consistent with Direction 1.3. The proposed amendment to the CCLEP 2022 would not impact the efficient assessment of a future development application.</p>
1.4 Site Specific Provisions	<p>The Department consider the Planning Proposal to be justifiably inconsistent with this Direction. This is due to the Site being zoned 'R1 General Residential' under the CCLEP 2022, under which retail premises are a prohibited use, however the Planning Proposal seeks to ensure retail premises do not exceed a total gross floor area of 150m² so it does not compete with the primary residential purpose of the zone.</p>

	<p>The Commission agrees with the Department’s assessment that introducing the retail premises as a site-specific provision is justified because permitting it through the land use table may lead to development misaligned to the objectives of the R1 zone. The Commission finds that the proposed inclusion of a café in the future development of the Site is beneficial because it would activate the ground floor in an appropriate location (at the corner of two main connecting roads and adjacent to a busy sports and recreation area). Therefore, the Commission finds the Planning Proposal to be justifiably inconsistent with Direction 1.4.</p>
<p>4.1 Flooding</p>	<p>The Department considers the Planning Proposal to be inconsistent with this Direction, and that this inconsistency cannot be justified.</p> <p>For the reasons set out in section 3.2 above, the Commission finds that the Planning Proposal is justifiably inconsistent with Direction 4.1.</p>
<p>4.2 Coastal Management</p>	<p>The Department considers the Planning Proposal’s consistency with this Direction to be unresolved.</p> <p>The Site is within the Coastal Environment Area and the north-eastern part of the Site is within the Coastal Use Area under <i>State Environmental Planning Policy (Resilience and Hazards) 2021</i>.</p> <p>The Department noted that given the coastal affectations of the Site, there may be potential to impact coastal processes and therefore consultation with Fisheries NSW and the EPA should be undertaken to resolve the Planning Proposal’s consistency with this Direction.</p> <p>The Proponent, in its Gateway Review Request, stated that a condition on the Gateway Determination could be imposed to require consultation with Fisheries NSW and the EPA as part of the exhibition period.</p> <p>The Commission agrees with the Department’s assessment that the Planning Proposal’s consistency with Direction 4.2 remains unresolved. However, the Commission does not consider the Planning Proposal to demonstrate any significant risk of impacting coastal processes and considers a condition on the Gateway Determination to undertake consultation with Fisheries NSW and the EPA to be appropriate to ensure any potential impacts on coastal processes are addressed.</p>
<p>4.3 Planning for Bushfire Protection</p>	<p>The Department considers the Planning Proposal’s consistency with this Direction to be unresolved.</p> <p>The southern, northern and north-eastern portions of the Site are mapped as bushfire prone ‘vegetation buffer’ land (Department’s Justification Assessment, page 1).</p> <p>The Department notes that this Direction requires the planning proposal authority (PPA) to consult with the Commissioner of the NSW Rural Fire Service (RFS), and until this occurs, the consistency with this Direction remains unresolved.</p> <p>The Commission notes that Direction 4.3(1) requires the PPA to consult with the Commissioner of the RFS following receipt of a Gateway determination and prior to undertaking community consultation.</p> <p>The Proponent, in its Gateway Review Request, noted that RFS reviewed the proposal as part of the concurrent development application that was lodged with the original Planning Proposal and confirmed the proposal was satisfactory, subject to relevant conditions. The Commission notes the concurrent development application that was referred to RFS was for a development inconsistent with the controls sought as part of this Planning Proposal, being greater in height and floor space ratio.</p>

<p>The Planning Proposal was accompanied by a Bushfire Assessment that concluded that an asset protection zone (APZ) can be established wholly within the Site, recommended Bushfire Attack levels for the building construction, noted direct internal ingress/egress via Charles Kay Drive and that the Site is supplied with reticulated water mains which can be utilised for firefighting purposes.</p> <p>The Commission considers that the Planning Proposal has demonstrated the capability for a future development to be consistent with Direction 4.3(2) and 4.3(3), however agrees with the Department’s assessment that the Planning Proposal’s consistency with Direction 4.3(1) remains unresolved.</p> <p>Therefore, the Commission considers it appropriate to include a condition on the Gateway Determination to undertake consultation with the Commissioner of the RFS, in accordance with the Department’s standard practice.</p>	
<p>4.4 Remediation of Contaminated Land</p>	<p>The Commission agrees with the Department’s assessment and considers the Planning Proposal to be consistent with Direction 4.4.</p>
<p>4.5 Acid Sulfate Soils</p>	<p>The Commission agrees with the Department’s assessment and considers the Planning Proposal to be consistent with Direction 4.5.</p>
<p>4.6 Residential Zones</p>	<p>The Commission agrees with the Department’s assessment and considers the Planning Proposal to be consistent with Direction 4.6.</p>

3.4 Social and economic outcomes

33. The Proponent is of the view that the Planning Proposal will deliver a range of positive social and economic outcomes including improved public domain and ground floor activation through the inclusion of a café tenancy, the revitalisation of the creek corridor to the south-east, the creation of direct and indirect construction jobs and ongoing employment, and the provision of additional housing and increased housing typology within an established centre (Proponent’s Planning Proposal, page 29).
34. Council considers that the proposed amendment to CCLEP 2022 would enable uplift in the residential development potential of the Site, providing an opportunity to increase housing supply whilst utilising existing infrastructure and services (Council letter dated 3 March 2025).
35. The Department noted that the Planning Proposal has the potential to enable renewal and activation of an underutilised site, through the provision of the opportunity for medium density housing, improved public domain and ground floor activation (Department’s Gateway Determination Report, page 21).
36. However, the Department does not consider the Planning Proposal has adequately demonstrated that the proposal would result in improved social and economic outcomes. In its Justification Assessment (page 15), the Department states that *“given the Site is significantly flood affected during the 1% AEP and PMF flood events, the Department is of the view that the proposal has the potential to result in negative social and economic impacts during flood events, by increasing the potential risk (to) safety of future residents and or occupants which may become isolated during floods, as well as emergency service workers should evacuation or rescue be required”*.

37. The Commission considers the flood hazards on the Site have been satisfactorily addressed and that the Planning Proposal will facilitate a development that can adequately respond to the flooding constraints of the Site, with minimal impact on residents, occupants and emergency workers, as addressed in **section 3.2**. Therefore, the Commission considers that the Planning Proposal will result in improved social and economic outcomes as it will facilitate:
- the provision of medium density housing within an established location;
 - an improved public domain with ground floor activation, provision of a café tenancy, revitalisation of the creek corridor and the appropriate use of an underutilised vacant site;
 - the creation of direct and indirect construction jobs and ongoing operational employment opportunities; and
 - the efficient use of existing infrastructure and services.

4. The Commission's Advice

38. The Commission has undertaken a review of the Planning Proposal and the Proponent's Gateway Determination Review Request, as requested by the Department.
39. In doing so, the Commission has considered the material set out in **Appendix C**, including information provided by the Proponent and the Department during the Commission's review process, and the reasons given in the Department's Gateway Determination Report and Gateway Review Justification Assessment.
40. Based on its consideration of the Material, the Commission finds that:
- the Planning Proposal aligns with the objectives of the *Central Coast Regional Plan 2041*;
 - the Planning Proposal has some inconsistencies with Section 9.1 Ministerial Direction *4.1 Flooding*, however those inconsistencies have been sufficiently justified;
 - the Planning Proposal is either consistent or justifiably inconsistent with the other relevant Section 9.1 Ministerial Directions, and the unresolved Directions (4.2 and 4.3) can be addressed as conditions of the Gateway Determination;
 - the Planning Proposal has demonstrated that the risk to safety during a PMF flood event (including H5 flood hazard risk) has been appropriately mitigated as any potential future development will be designed above the flood freeboard level, thereby supporting a shelter-in-place strategy (for approximately 74 minutes). Risks to the development will be mitigated by suitable building design and material selection supported by a qualified structural engineer, appropriate siting of the building footprint, and implementation of a Flood Emergency Response Plan;
 - the potential future development is a resilient design that will provide greater protection from natural hazards than a development that is permissible under the current development controls; and
 - the Planning Proposal will result in improved social and economic outcomes by facilitating renewal and activation of an underutilised Site for medium density housing, an improved public domain and ground floor activation.
41. The Commission finds that the Planning Proposal has strategic and site-specific merit.
42. The Commission advises that the Department's Gateway determination should be altered and that the Planning Proposal should proceed past Gateway, subject to conditions being imposed to require consultation with NSW Department of Primary Industries and Regional Development – Fisheries; NSW Environment Protection Authority; the Commissioner of the NSW Rural Fire Service; and other relevant public authorities in accordance with the Department's standard practice.



Juliet Grant (Chair)
Member of the Commission



Simon Smith
Member of the Commission

Appendix A – Referral Letter

Our ref: GR-2025-1 (IRF25/693)

Mr Andrew Mills
Chair
Independent Planning Commission
Suite 15.02, 135 King Street
SYDNEY NSW 2000

stephen.barry@ipcn.nsw.gov.au and ipcn@ipcn.nsw.gov.au
Attention: Stephen Barry, Planning Director, IPC

12 May 2025

Subject: Request for Gateway determination review – referral to Independent Planning Commission

Dear Mr Mills

I am writing to advise that the Department of Planning, Housing and Infrastructure has received a Gateway determination review request for a planning proposal applying to 310 Terrigal Drive, Terrigal as described below.

DPHI Ref. No:	Gateway Review to PP-2023-1899
LGA	Central Coast
LEP to be amended	Central Coast LEP 2022
Address	310 Terrigal Drive, Terrigal (Lot 27 DP 1223375)
Proposal	The proposal seeks to facilitate a mixed use development through increase in the maximum permissible height to 32 metres, increase the floor space ratio to 1.4:1 and include an additional permitted use of ‘retail premises’.

The reason for the Gateway determination review request is that the Minister for Planning and Public Spaces’ delegate determined on 18 December 2024, that the planning proposal should not proceed. The proponent has requested a review of the Gateway determination. The Department’s Gateway review justification assessment and supporting attachments are enclosed for the information of the Commission.

The Commission is requested to review the planning proposal and prepare advice concerning the merits of the review request. The advice should include a clear and concise recommendation to the Minister's delegate confirming whether, in its opinion, the Gateway determination should be altered. The Department's justification assessment and recommendation report and supporting attachments are enclosed.

Should you have any enquiries about this matter, I have arranged for Ms Angela Hynes, Manager North, East and Central Coast at the Department to assist you. Ms Hynes can be contacted at angela.hynes@planning.nsw.gov.au.

Yours sincerely

A handwritten signature in blue ink, appearing to read "D Thompson".

Daniel Thompson
Acting Executive Director
Local Planning and Council Support

Appendix B – Planning Proposal Timeline

Date	Action
31 August 2023	Lodgement of the original Planning Proposal to Council.
28 September 2023	A development application (DA/1928/2023) was submitted to Council for the Site.
October – November 2023	Agency comments provided on DA/1928/2023.
30 November 2023	The Central Coast Local Planning Panel (CCLPP) advised Council that the Panel did not consider the Planning Proposal to have strategic or site-specific merit.
26 February 2024	DA/1928/2023 was withdrawn.
26 March 2024	Council reviewed the CCLPP's advice and a revised Planning Proposal and resolved to support the amended Planning Proposal proceeding to Gateway assessment.
2 April 2024	The Planning Proposal was submitted to the Department.
9 April 2024	The Department issued a request for further information.
23 April 2024	Council provided a response to the Department's request for further information.
1 May 2024	The Department accepted the proposal as adequate for assessment, with minor clarifications considered appropriate to be addressed during the Gateway assessment stage.
Ongoing	Consultation with the Department of Climate Change, Energy, the Environment and Water – Conservation Programs, Heritage and Regulation (CPHR) (former Biodiversity, Conservation and Science division (BCS)), including the provision of additional and further flood modelling and a revised Flood Impact and Risk Assessment.
9 July 2024	The Department wrote to Council acknowledging the additional information provided by Council seeking to address the proposal's consistency with the Central Coast Regional Plan 2041, Ministerial Directions 4.2 Coastal Management and 4.1 Flooding. Considering the advice from CPHR and the Department's initial assessment of the proposal, the Department advised Council it is unlikely to support the proposal in its current form.
September – December 2024	Ongoing consultation with CPHR and Council.
17 December 2024	The Department issued a Gateway Determination which determined that the amendment to the CCLEP 2022 should not proceed.
11 February 2025	The Proponent initiated a Gateway Determination review.
3 March 2025	Council provided a response to the Gateway Review.
3 March 2025	The Proponent met with the Department and CPHR.
11 March 2025	The Proponent provided additional information to the Department and CPHR.
14 May 2025	Referral of Gateway Determination review to the Commission for advice.

Appendix C – Material Considered by the Commission

Document	Date
The Department's Referral to the Commission including the following documents:	
<ul style="list-style-type: none"> Letter of Referral Attachment A1 – Gateway Determination Attachment A2 – Gateway Determination Assessment Report Attachment B – Planning Proposal Attachment C1 – Gateway Review Request Attachment C2 – DPHI Gateway Review Justification Assessment Attachment D1 – Council Report 26 March 2024 – Request to Prepare Planning Proposal Attachment D2 – Council response – Review of Gateway Determination Attachment E – Local Planning Panel Minutes Attachment F1 – Flood Risk Assessment Attachment F2 – Proponent Response to BCS Advice Attachment F3 – Flood Letter to Support Gateway Review 	Received 14 May 2025 17 December 2024 December 2024 May 2024 11 February 2025 Received 14 May 2025 26 March 2024 3 March 2025 30 November 2023 4 September 2024 6 September 2024 Received 14 May 2025 (erroneously dated 2 November 2025) Various Various Various 19 October 2023 3 March 2025 24 September 2023 Various
Site inspection, including notes and photographs	2 June 2025
Comments and presentation material from meetings with:	
<ul style="list-style-type: none"> Department of Planning, Housing and Infrastructure Proponent 	23 May 2025 23 May 2025
Correspondence from the Proponent	Received 13 June 2025
Additional considerations:	
Section 9.1 Ministerial Directions	Current
<i>Central Coast Regional Plan 2041</i>	October 2022
<i>Local Strategic Planning Statement – The Framework for a Growing Central Coast Region (Interim Statement – August 2020)</i>	August 2022
<i>Draft Central Coast Local Housing Strategy</i>	May 2024
<i>One Central Coast – Revised Community Strategic Plan 2018-2028</i>	February 2022
<i>Shelter in place guideline for flash flooding</i>	January 2025
<i>Flood Risk Management Guideline</i>	2023
<i>Flood Risk Management Manual</i>	2023
<i>Local Environmental Plan Making Guideline</i>	2023

Appendix D – Department’s Gateway Review Justification Assessment



GATEWAY REVIEW

Justification Assessment

Purpose: To request that the Independent Planning Commission review the Gateway determination, taking into account information provided by the Proponent and to provide advice regarding the merit of the review request.

Dept. Ref. No:	GR-2025-1
LGA:	Central Coast
LEP to be Amended:	Central Coast LEP 2022
Address/ Location:	310 Terrigal Drive, Terrigal
Proposal:	To enable mixed use development with approximately 38 residential units by increasing the height of buildings to 25 metres, increasing the floor space ratio to 1.3:1, and permitting 'retail premises' with a maximum gross floor area of 150sqm as an additional permitted use.
Review request made by:	<input type="checkbox"/> The council
	<input checked="" type="checkbox"/> A proponent
Reason for review:	<input checked="" type="checkbox"/> A determination has been made that the planning proposal should not proceed.
	<input type="checkbox"/> A determination has been made that the planning proposal should be resubmitted to the Gateway.
	<input type="checkbox"/> A determination has been made that has imposed requirements (other than consultation requirements) or makes variations to the proposal that the proponent or council thinks should be reconsidered.

Background information

Details of the planning proposal	<p>The planning proposal (Attachment B) relates to land at 310 Terrigal Drive, Terrigal, Lot 27 / DP 1223375, (the site) and seeks to amend the Central Coast LEP 2022 to enable mixed use development with approximately 38 residential units by increasing the height of buildings from 8.5 metres to 25 metres, increasing the floor space ratio from 0.5:1 (0.7:1 with bonuses) to 1.3:1, and permitting 'retail premises' with a maximum gross floor area of 150sqm as an additional permitted use.</p> <p>Site description</p> <p>The site is approximately 4,262m² in area, with frontages to Terrigal Drive and Charles Kay Drive (Figure 1). There are no existing buildings on the site which is vegetated with grass and shrubs to the north, mature trees to the south and south-west, and is located adjacent to (within 40m) an existing 3rd order watercourse to the east.</p> <p>The proposal and supporting documentation identify the site as flood affected, with the southern, northern and north-eastern portion of the site also mapped as bushfire prone 'vegetation buffer' land (Figures 2 & 3).</p>
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Figure 1 site location (NearMap, November 2024)



Figures 2 & 3 Bushfire and flood affection (Source: Urban Design Study, June 2024, pp.23-24)

The surrounding area is zoned a mix of SP2 Infrastructure, R1 General Residential, R2 Low Density Residential and RE1 Public Recreation, and predominantly comprises one to two storey dwellings and townhouses to the north; vegetation and Terrigal High School to the south; townhouses to the east; and Terrigal Ambulance Service Station, Duffy's Reserve and sporting facilities to the west (Figure 4).

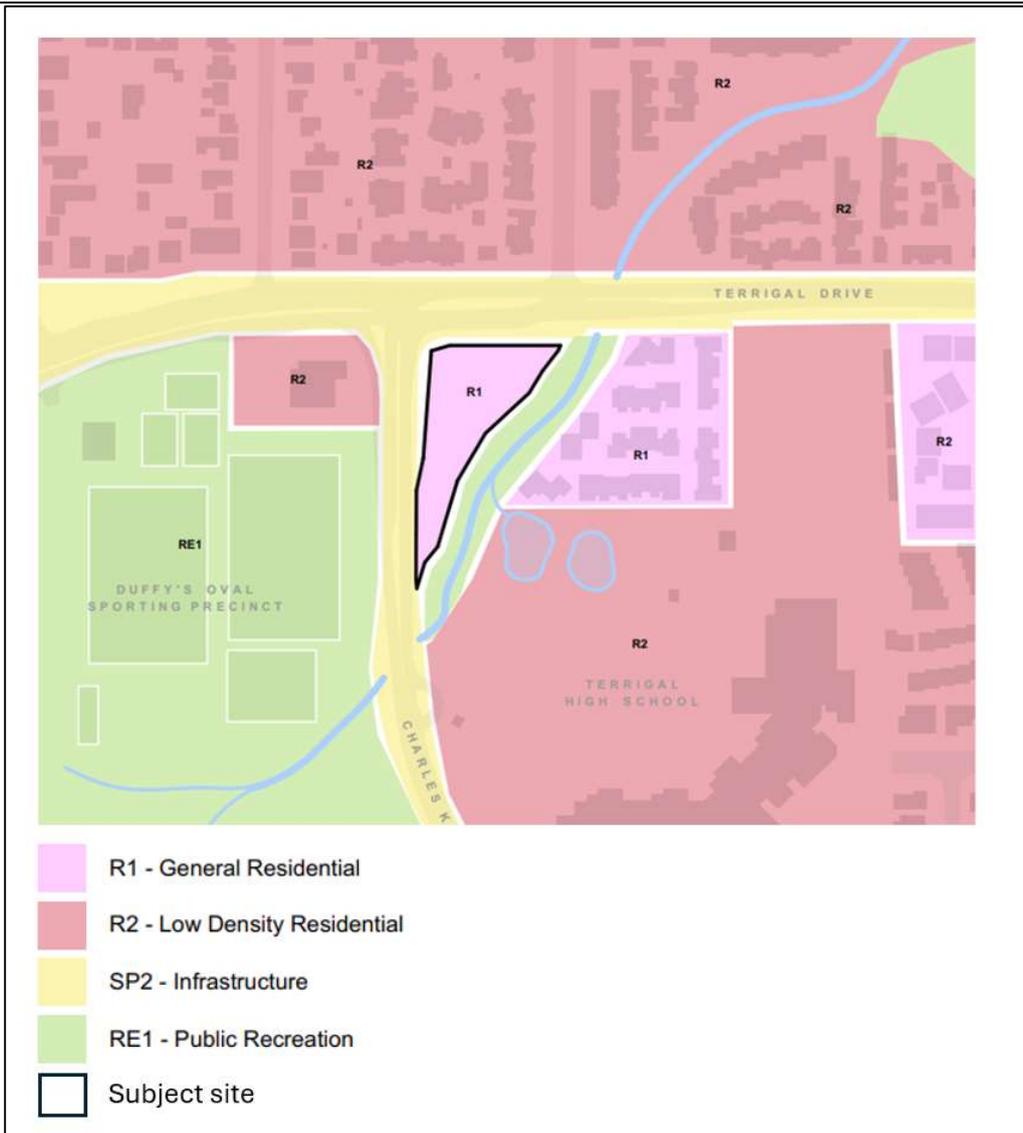


Figure 4 Current land use zoning (Urban Design Study, June 2024, p.16)

Planning proposal background

The proposal was submitted to Central Coast Council on 31 August 2023 after continued consultation with Council, which commenced in December 2021.

It is noted a development application (DA/1928/2023) for the site was submitted to Council in September 2023 for the proposed removal of 15 trees and vegetation, excavation, civil works, and construction of a 9-storey mixed use building comprising 50 residential units, a ground floor café (with Mezzanine) of 171.49m², and 3 levels of basement parking comprising 89 car parking spaces on the site. This DA was subsequently withdrawn on 26 February 2024.

It is noted Council's Local Planning Panel (LPP) did not support an earlier version of the proposal (**Attachment E**). On 30 November 2023, the Central Coast Local Planning Panel advised Council:

1. *The Panel does not consider the planning proposal to have strategic or site specific merit.*
2. *There is a lack of strategic justification for the proposed increase in height and yield on the subject site. There is no precinct or local strategy to indicate the appropriateness of the site and the surrounding area for increased*

development capacity. In the absence of such a strategy the planning proposal has no contextual planning justification and is not supported.

3. The Panel considers the planning proposal fails the site specific merit test for the following reasons:-
 - a. The site shape and dimensions constrain future development.
 - b. The traffic access to the site on a busy intersection is constrained and access to the site results in the loss of significant and sensitive vegetation.
 - c. The density proposed would conflict with the ecological sensitivity of the site together with the potential bushfire and flooding risk.
 - d. Surrounding development is predominantly single storey and two storey form and the proposed 32 metre tower would be anomalous.
 - e. The site is not considered a gateway site to Terrigal.
4. While the Panel's advice is that it does not support the planning proposal for the reasons provided above, should the Council decide to proceed with the planning proposal a maximum size for the retail use should be nominated, because as currently drafted the whole development could potentially become a retail use.

The proposal was subsequently revised in response to the LPP's comments to:

- reduce maximum height of building controls proposed for the site from 32m to 25m;
- reduce the maximum floor space ratio controls proposed for the site from 1.4:1 to 1.3:1;
- seek an amendment to Schedule 1 'Additional permitted uses' to permit retail premises on the site limited to a maximum GFA of 150m².

On 26 March 2024, Council considered the LPP's advice and the revised proposal and resolved to support the amended planning proposal proceeding to Gateway assessment.

The proposal was supported by Council on 26 March 2024 (**Attachment D1**) and submitted to the Department of Planning Housing and Infrastructure (the Department) for Gateway Assessment on 2 April 2024.

On 9 April 2024, the Department issued a request for further information, including an update to the flood assessment report to include the hazard category during the post and pre-development Probable Maximum Flood (PMF) event and appropriate arrangements for shelter-in-place and/or evacuation in a PMF event. Council responded to the Department's request on 23 April 2024 (**Attachment D2**).

On 1 May 2024, the Department accepted the proposal as adequate for assessment, however requested minor clarifications that were considered appropriate to be addressed during the Gateway assessment stage.

This was then followed by consultation with Department of Climate Change, Energy, the Environment and Water – Conservation Programs, Heritage and Regulation (CPHR) (former Biodiversity, Conservation and Science division (BCS)), including the provision of additional and further flood modelling and a revised Flood Impact and Risk Assessment (**Attachment F1**).

Department of Planning, Housing and Infrastructure

	<p>The Department wrote to Council on 9 July 2024 acknowledging the additional information provided by Council seeking to address the proposal’s consistency with the Central Coast Regional Plan 2041, Ministerial Directions 4.2 Coastal Management and 4.1 Flooding. Considering the advice from CPHR and the Department’s initial assessment of the proposal, the Department advised Council it is unlikely to support the proposal in its current form (Attachment G). The Department advised Council to consider withdrawing this proposal and resubmitting when revised information had been prepared to address Ministerial Direction 4.1. Following this letter, the Department had ongoing consultation with CPHR and Council (Attachment G)</p>
<p>Reason for Gateway determination</p>	<p>On 17 December 2024, a Gateway determination (Attachment A1) was issued which determined that the amendment to the Central Coast Local Environmental Plan (LEP) 2022 should not proceed. The reasons for Gateway determination are outlined below:</p> <ol style="list-style-type: none"> 1. The proposal has not demonstrated sufficient strategic merit as it does not give effect to the Central Coast Regional Plan 2041 and has not provided sufficient justification to demonstrate consistency with: <ul style="list-style-type: none"> • Objective 5: Plan for ‘nimble neighbourhoods’, diverse housing and sequenced development • Objective 7: Reach net zero and increase resilience and sustainable infrastructure • Narara District Planning Priority 5: Identify appropriate urban expansion opportunities to ensure a sufficient supply of safe, diverse and affordable housing. 2. The proposal has not adequately demonstrated site-specific merit in relation to flood risk and has not provided sufficient justification to demonstrate consistency with Section 9.1 Ministerial Direction 4.1 Flooding. 3. The proposal has not adequately demonstrated that the proposal would result in improved social and economic outcomes.

Council views

<p>Council response</p>	<p>Council provided a response to the Gateway review on 3 March 2025 (Attachment D2). Council noted the planning proposal was considered by Council at its Ordinary Council meeting on 26 March 2024 where Council resolved to endorse the proposal (Attachment D1). Council’s report notes:</p> <ul style="list-style-type: none"> • <i>The proposal will enable the development of a 6-storey residential building, providing medium density housing within close proximity to the Terrigal local centre, aligning with State-led policy responses and addressing gaps in housing supply, as described in the draft Central Coast Local Housing Strategy (page 5).</i> • <i>The proposal aligns with the objectives of the Central Coast Regional Plan 2041, by encouraging accessible 15-minute neighbourhoods (page 6).</i> • <i>Due to site characteristics, the developable area is limited and therefore has been strategically positioned to ensure minimal environmental impacts in relation to traffic and transport, flooding and biodiversity (page 6).</i> • <i>The proposal site is situated within 40m of a 3rd order stream and is classified as waterfront land subject to the requirements of the Water Management Act 2000. The proposal currently falls short of the vegetated riparian zone (VRZ) offsetting requirements under the Act, however Controlled Activity Approval will be required for development on waterfront land (page 6).</i>
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	<ul style="list-style-type: none"> • <i>Mitigation measures have been identified in the Environmental Assessment to reduce indirect impacts to biodiversity values of the site. Assessments of significance were conducted for the threatened flora and fauna species detected on the site, which concluded that the proposal would not result in a significant impact. The impacts have been reviewed by Council staff, who agree with the report conclusion (page 6).</i> • <i>The site is flood affected, with peak 1% AEP flood depths varying across the site. Towards the creek and within the site, peak 1% AEP flood depths reach 1.5 metres. However, in the vicinity of the site where the development is proposed, 1% AEP flood depths range from 400mm to 900mm. In the Probable Maximum Flood (PMF) event, flood depths range from 1,600mm to 2,500mm where the development is proposed. The impacts resulting from the proposed development are generally isolated to the subject site or the adjoining RE1 zoned watercourse. There is a minor 12mm increase in peak flood surface levels adjacent to Terrigal Drive, however this does not affect the trafficability of Terrigal Drive and only exceeds the CCDCP 2022 threshold for a few minutes. This was considered acceptable by Council's Development Flooding Engineer. Further studies assessing the impact of climate change induced rainfall intensity are being undertaken as requested by Council staff (page 6).</i> • <i>Trip generation is considered moderate and will have no significant impact on the operation of the local road network. Key intersections at Terrigal Drive and Charles Kay Drive, and Charles Kay Drive and Scenic Highway have been assessed and currently operate well, with low average delays. However, the intersection of Charles Kay Drive and Scenic Highway operates near capacity. SIDRA intersection modelling indicates that the proposal would have no significant impact on the future operation of these intersections. ... This assessment was supported by Council's Transport and Traffic Engineer (page 7).</i> <p>Council's response notes (Attachment D2) Council staff consider the planning proposal to have strategic merit given its location on key transport corridors into Terrigal, and within close proximity to the Terrigal Local Centre and Erina. Further, Council notes the proposed amendment to CCLEP 2022 would enable uplift in the residential development potential of the site, providing an opportunity to increase housing supply whilst utilising existing infrastructure and services. It is acknowledged that the site is subject to several constraints that would need to be mitigated to support development of the site.</p>
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Proponent's view

<p>Details of justification</p>	<p>The review of the Gateway determination was prepared by Urbis Pty Ltd, on behalf of the proponent, and submitted 11 February 2025 (Attachment Request).</p> <p>The proponent requested to meet with the Department and CPHR on 3 March 2025 to discuss risk mitigation. Additional information was sent to the Department and CPHR on 11 March 2025. This included the presentation on Flood Response Planning: Identified Risks and Mitigation 3 March 2025 (Attachment I1), previously prepared Fire Safety Building Code of Australia (BCA) Report (prepared as part of the former development application for the site) (Attachment I2) and email correspondence proposing a reduced FSR for the proposal of 1.15:1 noting density is a key concern for the proposal (Attachment I3).</p>
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Overview

The proponent's request disputes the Department's Gateway Assessment Report (**Attachment A2**), namely "that the site is within a high hazard floodway and that the development results in a substantial intensity of the site."

The proponent's request notes the site is in a highly urbanised area and the proposal seeks to permit the vertical extension of a building, with all dwellings located above flood freeboard levels. The proponent notes during the PMF the area is subject to flood and shelter in place would be required for 44 minutes. The proponent states the PMF is not intended to be a tool used to prohibit dwellings in low hazard areas. Rather, it is an emergency management response representing the estimated upper limit in an extremely rare flooding event. The proposal's supporting Flood Emergency Response Plan (FERP) (**Attachment F1**) concludes that the site is suitable from a flood risk and impact perspective.

Strategic merit

The proponent states the planning proposal demonstrates strategic merit as the proposal:

- Is consistent with the Central Coast Regional Plan 2041, which seeks to conserve waterways and create 15-minute neighbourhoods and diverse housing to support inclusive and vibrant communities.
- Includes a commitment to revitalise the riparian corridor along the eastern boundary, with the draft DCP including site specific controls.
- Is consistent with the Central Coast Community Strategic Plan 2018-2028 – One Central Coast, which seeks to increase housing diversity, active transport and community safety.
- Assists Council in achieving housing targets identified in Council's draft Local Housing Strategy, which requires an additional 32,550 dwellings by 2041.
- Achieves a variety of housing typologies through the delivery of residential apartments which reflect the vision for Central Coast to deliver greater housing choice and diversity.
- Unlocks the development potential for the site and activates a prominent corner as the gateway to Terrigal, with 38 new dwellings and a café to activate the corner.

Central Coast Regional Plan 2041

The Central Coast Regional Plan 2041 identifies Terrigal as a key local centre with potential for additional infill housing and sufficient infrastructure, jobs, services and transport to support this growth. The proponent states the planning proposal is consistent with the following objectives of the Regional Plan:

Objective 5 Plan for 'nimble neighbourhoods', diverse housing and sequenced development - The proposal seeks to deliver a diverse mix of residential apartments and a retail premise in a prominent location at the corner of two main connecting roads in Terrigal and located within cycling distance from Terrigal Town Centre, supporting the creation of an accessible, 15- minute neighbourhood.

Objective 7 Reach net zero and increase resilience and sustainable infrastructure - The proposal seeks to restore the existing waterway along the site's south-eastern boundary, which is currently full of weeds and is a low-quality water system. This will increase the resilience of the water system and the surrounding environment as per the priority. There are no threatened flora species and no significant fauna habitat on the site that may be impacted. The Flood Risk Management Plan (**Attachment**

F1) demonstrates that flood impacts resulting from the proposed built form are generally isolated to the site and can be managed. The proposal will deliver a residential development in an accessible area with public transport available, thereby reducing private car use and achieving objectives of a low carbon city.

Narara District Planning Priority 5 Identify appropriate urban expansion opportunities to ensure a sufficient supply of safe, diverse and affordable housing - The proposal transforms underutilised residential zoned land to provide increased housing supply and diversity for the region, in the form of apartment typologies. This will enable a better use of the site for a greater variety of housing choices, noting that this is one of few infill opportunities in Terrigal.

Site specific merit

The proponent states the planning proposal demonstrates site-specific merit for the following reasons:

- The site sits at the intersection of two major roadways, being Terrigal Drive and Charles Kay Drive, providing strong connectivity to the surrounding local centres and accessibility to the local bus network.
- The site is an island corner lot and substantially separated from adjoining properties, which makes it suitable for a vertical development, without overshadowing nearby properties or impacting on views or privacy.
- Active frontages and passive surveillance are provided along the site frontages and to the pedestrian pathway to the south-east through a café and residential uses.
- The concept design/planning proposal (**Attachment B**) demonstrates the site is capable of accommodating both the building footprint and the density without adversely impacting on the environmental qualities of the locality or the amenity of nearby residential properties.
- Extensive consultation was held with BCS regarding the waterway and the flood impacts, prior to lodging the planning proposal. The advice received (**Attachment H1**) was reflected in the design of the building footprint and the flood freeboard levels. Based on preliminary feedback, the flooding matters were considered resolved.

Agency comments

As noted previously, a concurrent development application was lodged with Central Coast Council (DA/1928/2023) (since withdrawn). That application was referred to State agencies, including NSW Rural Fire Service (RFS), Transport for NSW (TfNSW), Ausgrid and the former DPHI – Water. Agency comments have been addressed in the planning proposal and in principle support from agencies is noted.

In summary this includes:

- Satisfied pre-planning advice/requirements regarding flooding from Central Coast Council (December 2021).
- requirements for the Flood Emergency Response Plan and FERP being supported by CPHR and DPHI (June 2023) (**Attachment H1**).
- confirmation the proposal will not have any significant impacts on the nearby classified State road network from Transport for NSW (November 2023) (**Attachment H2**).

- Confirmation the proposal could proceed, subject to future relevant conditions of consent relating to bushfire management from Rural Fire Service NSW (October 2023) (**Attachment H3**).

Social and economic outcomes

The proponent states in relation to flood impact, flood damages would be minimal as future development will incorporate flood compatible materials and finished floor levels will be above the flood planning level. The proposal will therefore not result in any unsustainable social and economic cost. There will be no adverse social impact on risk to life through the proposed FERP (**Attachment F1**) which will manage safety during flood events.

Environmental outcomes - Flooding

The proponent contests that the Department's Gateway assessment (**Attachment A2**) has failed to recognise the existing capacity of the land under the current planning controls. Particularly in the context of Section 9.1 Direction 4.1 Flooding part (4)(c) which notes a planning proposal must not contain provisions that permits a significant increase in the dwelling density of the land in a flood area.

Under the Central Coast LEP 2022, the site is permitted the following density:

- Height: 8.5m
- Floor space ratio (FSR): 0.7:1 (in accordance with Clause 4.4A(4)).

A compliant development on the site under the LEP and the in-fill affordable housing provisions of the *State Environmental Planning Policy (Housing) 2021*, [subject to the provision of affordable housing as part of future development,] can result in:

- Height: 11.05m (base height of 8.5m + 30% permitted bonus).
- FSR: 0.9:1 (base FSR of 0.7:1 + 30% permitted bonus).

The total FSR permitted on the site under the current controls and bonus provisions is 0.9:1 which equates to a GFA of 3,878.42m², [provided 15% or approximately 582m² is provided as affordable housing in accordance with the Housing SEPP].

The planning proposal seeks to increase the FSR to 1.3:1 to deliver approximately 5,500m² of residential GFA. The proponent notes this is approximately 1,700m² greater than the current controls and when applying an 80% efficiency rate and adopting an average apartment size of 90m², the existing controls would yield 34 apartments [with approximately 5 to 6 units to be provided as affordable housing units]. The proposed controls would yield 48 apartments, resulting in 14 apartments in a vertical high-rise with all units located above the flood freeboard levels. The proponent states the proposal will not result in a significant increase in density of land in the flood area.

Further to the above, the proponent notes that the planning proposal may be inconsistent with Ministerial Direction 4.1 if the planning proposal authority can satisfy the Planning Secretary that the planning proposal is supported by a flood and risk impact assessment prepared in accordance with the principles of the Floodplain Development Manual 2005 and consistent with the relevant planning authorities' requirements.

The planning proposal is supported by a Flood Impact & Risk Assessment (FIRA) (**Attachment F1**) that has been agreed and endorsed by Council. The FIRA identifies:

- The site is considered a H4 hazard category for both pre and post development [at 1%AEP] (identified as low hazard in the [superseded] Flood Risk Management Guide FB03). Additionally, the hazard category increases to H5 in the PMF for both pre and post development.
- During all major flood events up to and including PMF, peak flood behaviour subsides in less than 2 hours, a shelter-in-place strategy has been supported as there is no need to evacuate during a flood.
- During the 1% AEP flood event, the development presents no changes to risk level on the site and surrounds, despite a change in minor afflux. The development will result in a reduction in flood levels within Terrigal Drive, however from 60 minutes – 104 minutes shelter in place is required for approximately 44 minutes. At 104 minutes, horizontal evacuation to Scenic Highway is available and emergency vehicles can access the site.
- During the PMF flood event, the development presents no changes to risk level on the site and surrounds, despite a change in minor afflux. The development will result in a reduction in flood levels within Terrigal Drive, however from 25 minutes – 99 minutes, shelter in place is required for approximately 74 minutes. At 100 minutes, horizontal evacuation to Scenic Highway is available and emergency vehicles can access the site.

The FIRA provides a Flood Emergency Response Plan (FERP) which will guide management of flood impacts. This includes a shelter in place strategy and risk mitigation measures as outlined in **Attachments F1 and F2**. It to be noted the Department's Shelter in Place Guideline for flash flooding was finalised January 2025.

Additional flood letter prepared by Civil Stormwater Engineering Group (**Attachment F3**) to support proponent's request notes:

The site is governed by three flood functions - floodway, flood storage and flood fringe, with the latter being the predominant based on area of coverage. Despite the site being categorized as a floodway, the development is proposed wholly within the flood fringe and flood storage area, the building footprint is located wholly outside the floodway as per the post development flood function map found on page 125 of the Flood Risk Assessment (**Attachment F1**) and shown at **Figure 5**.

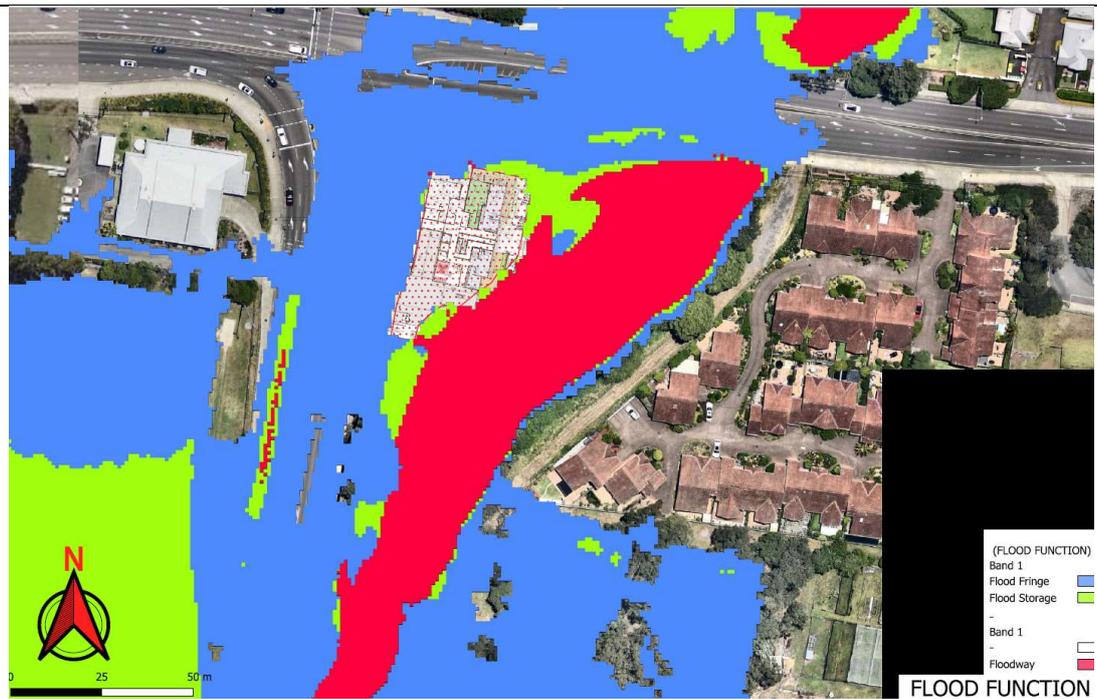
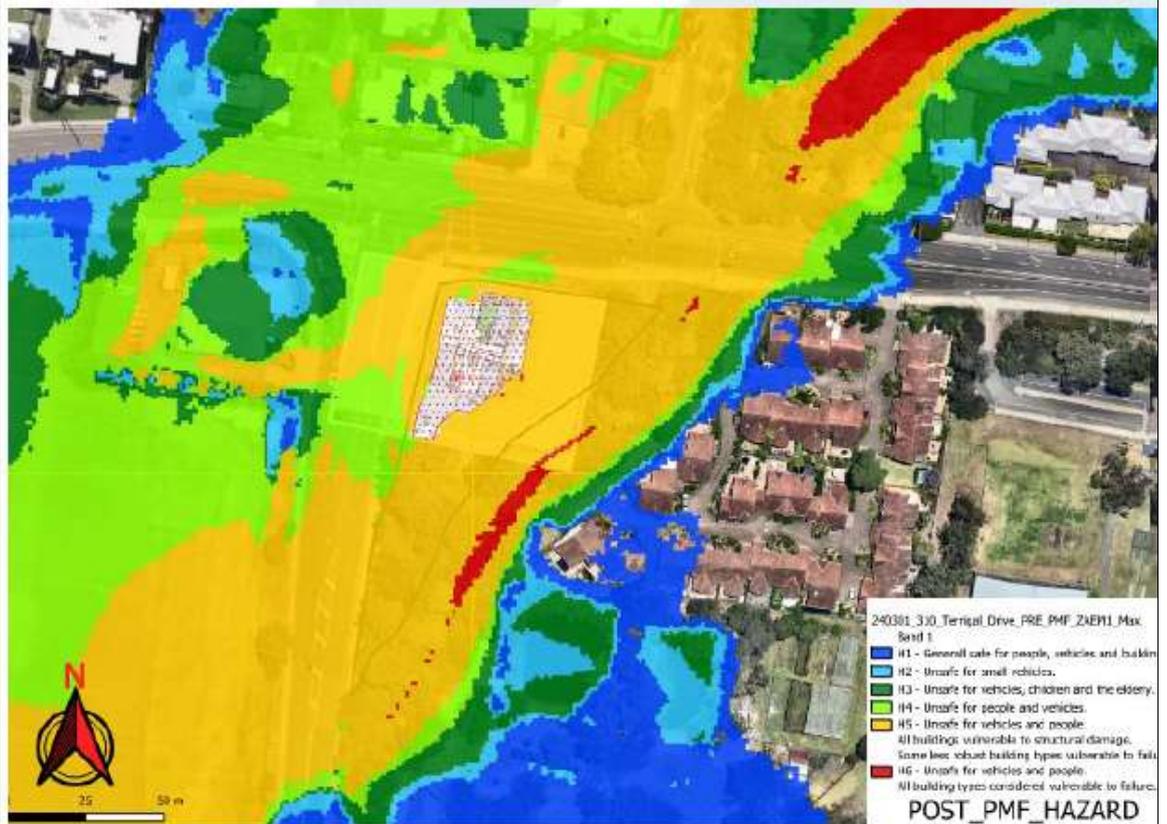
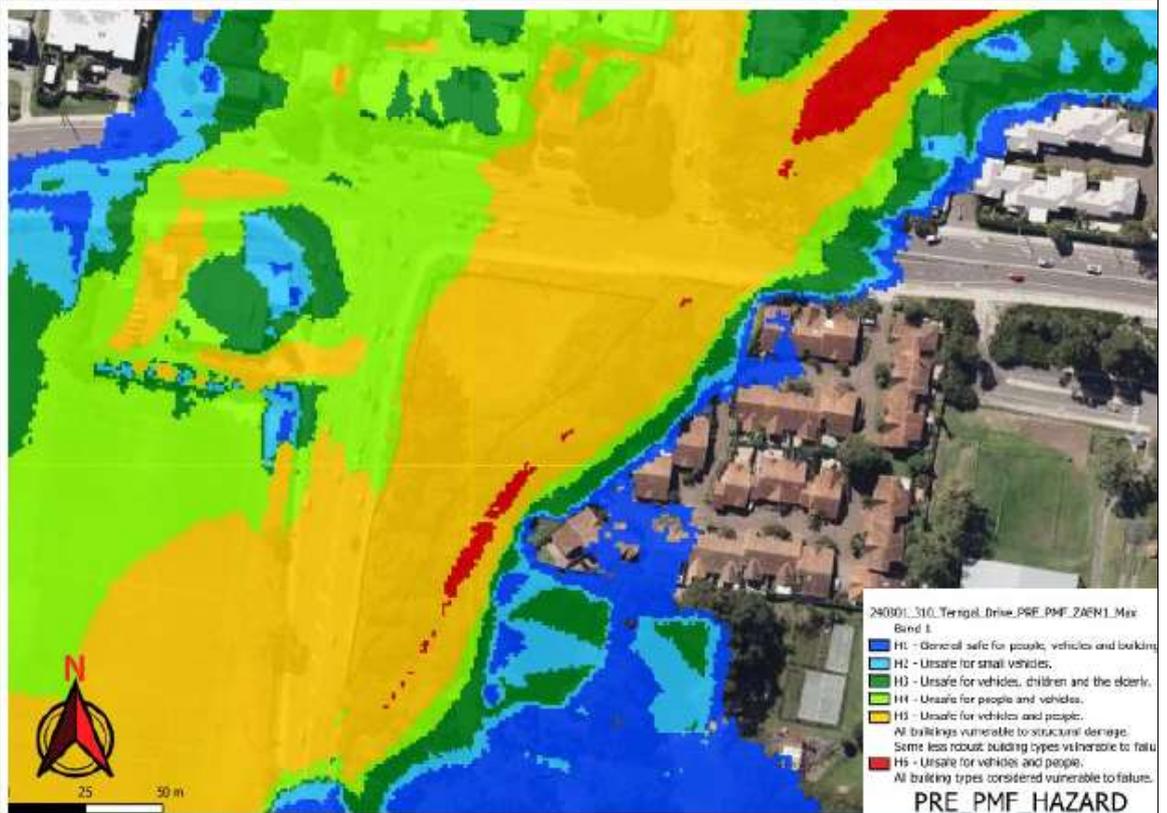


Figure 5 Potential development footprint and flood function map (Flood Impact Assessment - Appendix A, Civil Stormwater Engineering Group, 17 April 2024)

The proponent states, the Gateway Determination Report presents the incorrect flood risk map under Figure 14 page 21. As previously mentioned, in revision 3 of the FIA, the TUFLOW model was updated to ensure risk levels were not increased in all flood events. This was successfully achieved by altering the proposed building footprint. The latest flood hazard map for the PMF post development shows similarity in risk levels with the PMF predevelopment scenario shown at **Figures 6 and 7**.



Figures 6 & 7 Subject site during the PMF event under existing conditions and proposed scenario (Flood Impact Assessment - Appendix A, Civil Stormwater Engineering Group, 17 April 2024)

Assessment summary

<p>Department's assessment</p>	<p>Strategic Assessment</p> <p><u>Regional Plan</u></p> <p>The Central Coast Regional Plan 2041 (the Regional Plan), released by the NSW Government in 2022, sets a land use vision to 2041 and contains objectives, strategies and actions which provide the strategic direction to manage growth and change across the Central Coast in the context of social, economic and environmental matters over the next 20 years. The Regional Plan also includes planning priorities for the future growth of its four districts, including the Narara district, Central Coast's major urban area within which the subject site is located.</p> <p>While the proposal has the potential to increase the supply and diversity of housing choice within the Central Coast LGA, the Department considers the proposal to be misaligned with objectives 5 and 7 and the identified priorities for growth in the Narara District as it seeks to increase the permissible density of development of land subject to risks from natural hazards.</p> <p>The Department is not satisfied the planning proposal adequately gives effect to the Regional Plan nor demonstrated adequate strategic to proceed as outlined below.</p> <ul style="list-style-type: none"> • Objective 3: Create 15-minute neighbourhoods to support mixed, multi-modal, inclusive and vibrant communities – While the proposal supports this objective as it seeks to facilitate the redevelopment of a site located within a general suburban area for mixed use retail and residential purposes, the subject site is environmentally constrained as it is highly flood affected and contains bushfire prone 'vegetation buffer' land. • Objective 5: Plan for 'nimble neighbourhoods', diverse housing and sequenced development - Whilst the proposal is consistent with the objective as it seeks to facilitate housing in an established and sought after area, the Plan also reiterates the importance of the NSW Housing Strategy (Housing 2041) Housing System Pillars of supply, affordability, resilience and diversity. The resilience pillar in Housing 2041 includes matching housing to community and environmental issues, so people, communities and their homes are safe, comfortable and resilient (p.48). • Objective 7: Reach net zero and increase resilience and sustainable infrastructure - Strategy 7.7 highlights the need for local strategic planning alignment with the NSW Government's natural hazard management and risk mitigation policy framework. Strategy 7.8 reinforces the importance of ensuring future residential is not planned in areas exposed to a high risk from bushfire, flood and/or coastal hazards, or where evacuation is likely to be difficult. • Narara District Planning Priority 5: Identify appropriate urban expansion opportunities to ensure a sufficient supply of safe, diverse and affordable housing - This priority is focused on identifying appropriate locations in the Narara District for urban expansion and highlights the need for Council to prioritise growth in areas in proximity to centres and employment areas with access to essential infrastructure and relatively few environmental constraints. The Plan identifies that this should occur on land not categorised as flood planning area and can be developed without increasing existing or future residents' risk of exposure to natural hazard. <p>The Department considers the proposal to be inconsistent with the above as it has not adequately addressed hazard risk to a level suitable for the proposed development uplift for residential purposes and has the potential to increase future resident's exposure to flood risk.</p>
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Local Strategies

- Local Strategic Planning Statement: The Framework for a Growing Central Coast Region (Interim Statement - August 2020) - the Department notes LSPS' focus on the provision of new housing within centres, with the need to 'create sustainable and resilient communities' identified as a key environmental planning priority. The proposal does not align with the Plan's preference for housing supply to be focused within centres and low risk areas, as the site is significantly flood affected and is located outside the existing centres (approximately 4.7km from Erina strategic centre and 2.1km from Terrigal centre).
- Central Coast Local Housing Strategy (May 2024) (endorsed by Department September 2024): The proposal would support objectives of the LHS to increase both supply and diversity of housing in the LGA. However, the LHS notes the impact the Region's diversity of environmental qualities has on the availability of land for urban development and considers existing centres in less constrained locations to be more optimal locations for residential growth (p.13). Strategy 5 'Introduce measures to promote design resilience' of the draft LHS also recognises the importance of effective planning and design in managing and reducing hazard impacts and building resilient housing. The Department considers the proposal does not align with the LHS as it seeks to facilitate the supply of housing on land vulnerable to natural hazards risk and outside existing centres.
- One Central Coast - Revised Community Strategic Plan (CSP) 2018-2028 (February 2022) - CSP recognises the Central Coast LGAs vulnerability to climate change impacts and highlights the need to ensure safety in extreme weather events and the Department is not satisfied the proposal is consistent with the CSP in this regard.

Section 9.1 Ministerial Directions

The Department considers the planning proposal to be inconsistent with the following 9.1 Directions:

- 4.1 Flooding - This Direction seeks to ensure that development of flood prone land is consistent with the Government's Flood Planning Framework and ensure LEP provisions are commensurate with the flood behaviour and consider the potential impacts on and off the land. A planning proposal must not contain provisions that permit development in floodway areas, development for the purposes of residential accommodation in high hazard areas, nor permit significantly intensify development in a flood planning area. The Department consulted with Department of Climate Change, Energy, the Environment and Water – Conservation Programs, Heritage and Regulation (CPHR) (former Biodiversity, Conservation and Science division (BCS)) on the proposal, who considered that the proposal is inconsistent with Direction 4.1 (**Attachment G**). CPHR also raised concerns that:
 - the supporting Flood Impact Assessment does not provide adequate detail commensurate with the site's flood risk.
 - there are risks associated with shelter-in-place as the preferred emergency management response in locations of high flood risk.
 - the high flood hazard may compromise the buildings structural integrity in an extreme event.

CPHR also recommended that the proposal be supported by a Flood Impact Risk Assessment (FIRA) prepared in accordance with the Flood Risk Management Manual (FRMM) (NSW Government, 2023) and its associated guidelines, and provide an understanding the residual risk to life associated with sheltering-in-place during a flood event; and be referred to State Emergency Services for comment.

The Department's Shelter in Place Guideline for flash flooding (adopted in January 2025 following Gateway determination) notes emergency management strategies, such as shelter in place, need to minimise residual risks in strategic decision making. CPHR have noted while it is accepted that residents can safely shelter-in-place during a flood event, there remain residual risks associated with increasing the population living in a high hazard (H5 during PMF) location. The analysis presented in Section 3.6 of the FIRA indicates that the access roads to both Terrigal Drive and Charles Kay Drive will become un-trafficable during large flood events. For the design flood events modelled, both access roads will be un-trafficable for between 45 and 55 minutes. CPHR advised that there remain significant residual risks associated with shelter-in-place, particularly relating to residents returning to or leaving the site during flood events.

- 4.2 Coastal management - While the proposal does not include any rezoning, it does seek to amend the existing height and FSR controls which will increase the development potential of the subject land. Given the coastal affectations on the site, this may have the potential to impact coastal processes. Accordingly, consultation with Fisheries NSW and the NSW Environment Protection Authority should be undertaken. The Department noted that consistency with this Direction would remain unresolved as it required consultation with relevant agencies.
- 4.3 Planning for bushfire protection - The direction requires that the Planning Proposal Authority must consult with the Commissioner of the NSW Rural Fire Service (RFS). Until consultation has occurred the inconsistency of the proposal with the direction remains unresolved.

Site specific merit

In summary, the Department is not satisfied that risk from natural hazards has been sufficiently addressed to allow the proposal to proceed. The Department notes the site is subject to H5 category of flood during the PMF (as shown in **Figures 6 & 7**) and that the Shelter in Place Guidelines note that it should not be used for sites subject to H5/high hazard. Further, given the site is significantly flood affected during the 1% AEP and PMF flood events, the Department is of the view that the proposal has the potential to result in negative social and economic impacts during flood events, by increasing the potential risk the safety of future residents and or occupants which may become isolated during floods, as well as emergency service workers should evacuation or rescue be required, and may also generate a requirement for government spending on emergency services and management measures.

Response to Gateway Determination Review request

As noted previously in this report, additional information was sent by the proponent separate to the Gateway Determination Review (GDR) request and planning proposal package submitted for a Gateway Determination. Additional information was sent to the Department and CPHR on 11 March 2025. This included a presentation on Flood Response Planning: Identified Risks and Mitigation 3 March 2025 (**Attachment I1**), previously prepared Fire Safety Building Code of Australia (BCA) Report (prepared as part of the former development application for the site)

(Attachment I2) and email correspondence proposing a reduced FSR for the proposal of 1.15:1 noting density is a key concern for the proposal (Attachment I3).

The Department's response noted the Department's GDR reporting package will refer to the matters raised in the additional information, however the Department and CPHR are not in a position in the process to provide an assessment on the additional information and a potential revised planning proposal/FSR. The Department considers this is a matter for the IPC's advice in consideration of potential pathways following the subject review of the issued Do Not Proceed Gateway Determination (Attachment A1).

Density and FSR

The proponent's Gateway Review Request (Attachment C) provides discussion regarding development density of the site as part of an additional assessment under Section 9.2 Direction 4.1 Flooding, in particular (4)(c). 4(c) under Direction 4.1 states *a planning proposal must not contain provisions that apply to areas between the flood planning area and probably maximum flood to which Special Flood Considerations apply which: ... permit a significant increase in the dwelling density of that land.*

As discussed previously in this report, the proponent states (Attachment C) that the proposal will not result in a significant increase in density of land in a flood area as the current maximum permissible FSR could be increased through bonus FSR provisions under the Housing SEPP (subject to the provision of affordable housing). As such the proposal would only result in an increase of 14 apartments. The Department notes these bonus provisions would be subject to merit assessment and development consent may not be issued for the full bonus available.

The Department also notes that if the planning proposal is supported with a FSR of 1.3:1 and 25m maximum building height to be permissible under the LEP, future redevelopment of the site could seek to utilise a 30% bonus under the Housing SEPP resulting in greater density of the site. Therefore, the highest potential density that could be achieved for the site following the rezoning (if proceeding) would be approximately FSR 1.69:1 (Bonus 0.39:1) and 32.5m height (bonus 7.5m).

The Department notes there is no measure of what a significant increase in density under Direction 4.1(4)(c) is, however, the Department does not consider the planning proposal sought or the potential density on the site that could be achieved after rezoning and calculation of bonus FSR under the Housing SEPP, represents a non-significant increase in density.

Recommendation

The Department recommends that no amendments to the Gateway determination are made.

Department of Planning, Housing and Infrastructure

Attachments	Attachment A1	Gateway determination
	Attachment A2	Gateway determination report
	Attachment B	Planning proposal
	Attachment C	Proponent's gateway review request
	Attachment D1	Council report 26 March 2024
	Attachment D2	Council response to gateway review
	Attachment E	Local Planning Panel minutes
	Attachment F1	Flood Risk Assessment
	Attachment F2	Proponent response to former BCS advice
	Attachment F3	Flood letter to support proponent's gateway review request
	Attachment G	Department of Planning, Housing and Infrastructure (Department) correspondence
	Attachment H1	Former development application BCS comment
	Attachment H2	Former development application Transport for NSW comment
	Attachment H3	Former development application RFS comment
	Attachment I1	Additional information provided after lodgement of gateway determination review request – Presentation to former BCS and Department on 3 March 2025
	Attachment I2	Additional information provided after lodgement of gateway determination review request – Fire Safety BCA report
Attachment I3	Additional information provided after lodgement of gateway determination review request – Department response to revising FSR	

COMMISSION'S RECOMMENDATION

Reason for review: A determination has been made that has imposed requirements (other than consultation requirements) or makes variations to the proposal that the proponent or council thinks should be reconsidered.

Recommendation	<input type="checkbox"/>	The planning proposal should not proceed past Gateway.
	<input type="checkbox"/>	<input type="checkbox"/> no amendments are suggested to original determination. <input type="checkbox"/> amendments are suggested to the original determination.
	<input type="checkbox"/>	The planning proposal should proceed past Gateway in accordance with the original Determination.

Any additional comments:



New South Wales Government
Independent Planning Commission

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