

The General Manager
MidCoast Council
PO Box 482
Taree NSW 2430

Dear Sir,

SUBJECT: STATEMENT OF ENVIRONMENTAL EFFECTS
PROJECT: PROPOSED CAUSEWAY REPLACEMENT – MANNING RIVER
2414 & 2490 THE THUNDERBOLTS WAY, TIBBUC

1. Introduction

An existing causeway across the Manning River provides historical access to Lot 64 DP 778073, 2414 & 2490 Thunderbolts Way, Tibbuc NSW from the Thunderbolts Way. The existing causeway's date of construction is unknown; however it sustained significant damage from recent significant flood events.

In April 2021 the owner of 2414 Thunderbolts Way, Tibbuc, NSW, engaged the Soil Conservation Service (SCS) to undertake a geomorphic condition assessment of the existing concrete causeway (copy attached). This assessment concluded:

Localised failure of the concrete capping, in addition to cavitation and apron loss, indicate poor structural integrity of causeway. Additionally, these failure points have resulted in exposed steel pins and concrete reinforcement making the site a potential safety hazard.

On the 21 November Midcoast Council issued a Development Consent for a Single Storey Dwelling on Lot 64 DP 778073. Access to this dwelling is required from the Thunderbolts Way across the Manning River. The current causeway is in a state of disrepair and requires replacement. Council has issued an interim Occupation Certificate for the dwelling, however the issuing of the final Occupation Certificate is contingent upon the replacement of the causeway and its ability to allow access for emergency vehicles.

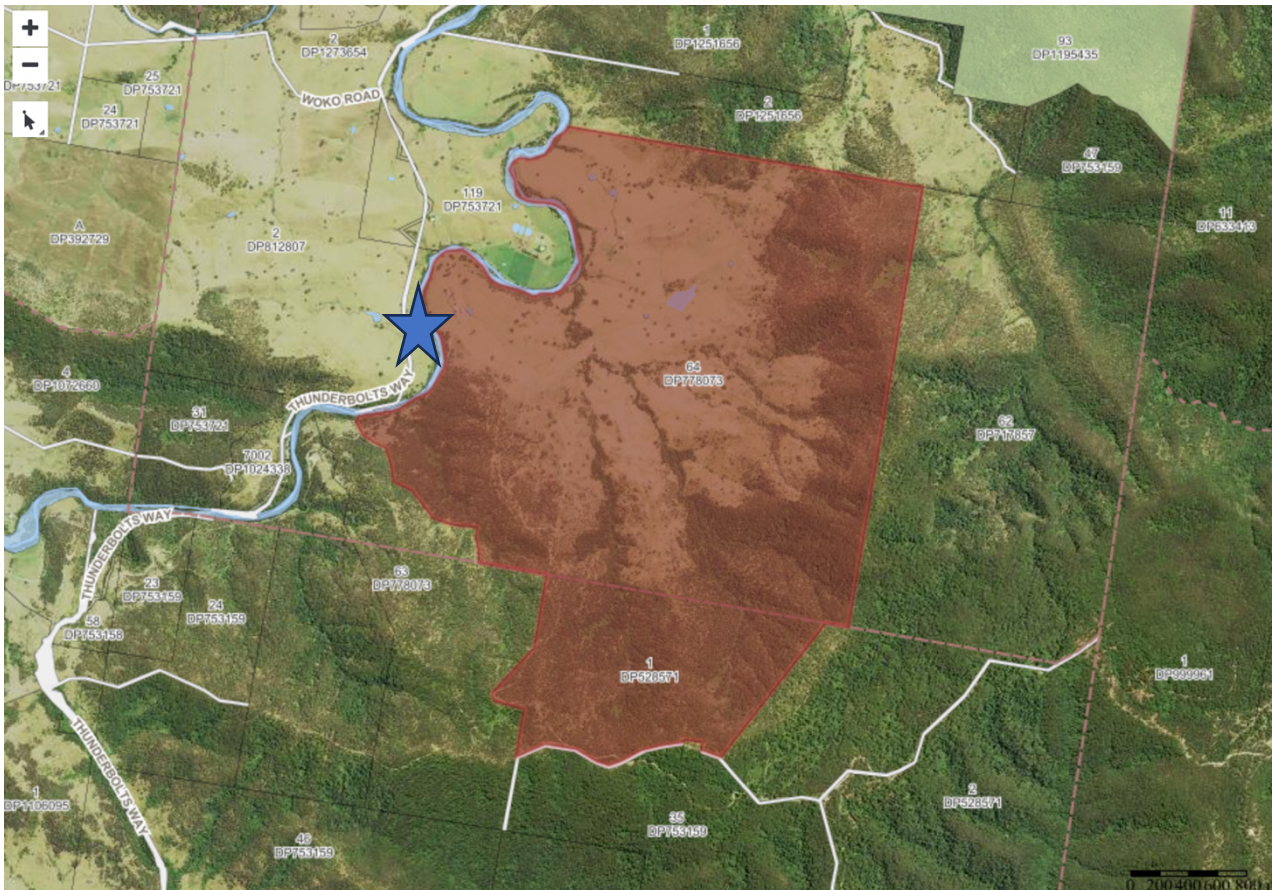
The owner of 2414 Thunderbolts Way, Tibbuc commenced investigations for the removal of the causeway and construction of a new bridge structure. Following initial assessment and cost evaluation the construction of a new bridge was deemed to be a financially unviable option. Consequently, it is proposed to replace the causeway with a part bridge and part causeway structure.

STATEMENT OF ENVIRONMENTAL EFFECTS
CAUSEWAY REPLACEMENT – MANNING RIVER
2414 & 2490 The Thunderbolts Way, Tibbuc

This Statement of Environmental Effects (SEE) has been prepared to accompany a Development Application for the replacement of the causeway. The site of the proposed development is shown in **Figure 1**.

Figure 1 – Site Location

Source: MidCoast Council Online Mapping
North ^



Causeway Location

The decision-making process for the proposed development falls under Part 4 of the Environmental Planning and Assessment Act 1979 (EP&A Act). The Council, in deciding whether consent should be granted, must examine and consider relevant matters for consideration. This report is intended to assist in this decision-making process and to provide information that satisfies the requirements of Section 4.15 of the EP&A Act.

The proposed development is an integrated development as it requires a Controlled Activity Approval under the Water Management Act 2000 and Dredge and Reclamation Permit will be required under Part 7 of the Fisheries Management Act 1994.

2. Site Context

Lot 64 DP 778073 is rural farmland and is utilised for primary production.

The site is surrounded by rural farmland. A portion of Lot 64 DP 778073 in the south is heavily forested and is zoned C3. The Manning River is a 6th order stream at the site, and flows downstream approximately 100km to the east, discharging into the Pacific Ocean at Harrington.

Advice from the NSW Department of Planning, Housing and Infrastructure has deemed that the location of the bridge is across land that is part of Lot 643 DP1295152 and Lot DP812807 and that no Crown land is affected. Consequently, Crown Landowners Consent is not required (letter attached).

3. The Proposed Development

The proposed development is a concrete bridge, causeway and culvert are proposed to replace a flood damaged causeway crossing on the Manning River.

The proposed development is presented in the plans prepared by Matrix Thorton Consulting Engineers dated 13.3.24 and included with the Development Application.

4. Environment Protection and Biodiversity Conservation Act 1999

An assessment of the proposed development against the relevant provisions of the Commonwealth Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) was undertaken by AEP and is attached to the Development Application.

The assessment concluded:

Consideration of the EPBC Act revealed that it is unlikely that significant impacts on Matters of National Environmental Significance will occur as a result of the proposal. As such a referral is not considered likely to be necessary.

5. Water Management Act 2000

Manning River, a 6th order stream, runs through the Subject Site (refer Figure 1). Under the Water Management Act 2000 (WM Act), development work within 40m of a mapped watercourse requires a Controlled Activity Approval (CAA).

DPE (2022) guidelines for works and activities that can occur on waterfront land and in riparian corridors under the WM Act (note approvals are still required under other legislation). The proposed bridge is permissible on a 6th order stream; however, approval is still required.

In accordance with Section 91 of the WM Act, a CAA is required to undertake the proposed works.

6. Fisheries Management Act 1994

The Fisheries Management Act 1994 (FM Act) objectives are to conserve, develop and share the fishery resources of the State for the benefit of present and future generations. The proposed causeway requires the following sections to be addressed under the FM Act:

- Section 201 – A permit is required for dredging or reclamations works on water lands; and
- Section 219 – The blocking of fish passage is prohibited.
- Section 220ZZ – Significant effects on threatened species or community must be assessed.

An assessment of the proposed development against the relevant provisions of the FM Act was undertaken by AEP and is attached to the Development Application.

The assessment concluded with the following key findings:

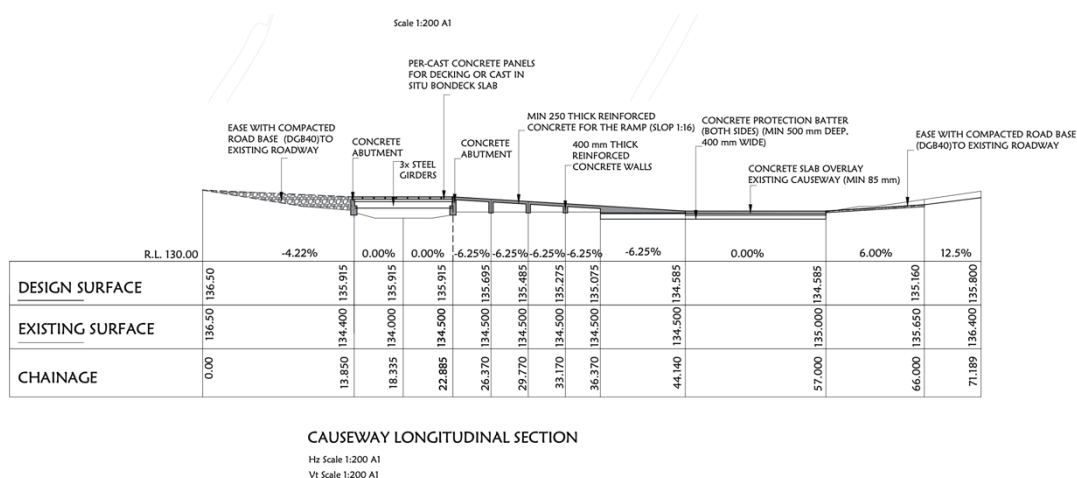
The proposed bridge will not block the passage of fish movement and migration.

The 'avoid, minimise and offset' hierarchy proposed by the Hunter Regional Plan 2041 (prepared under Division 3.1 of the EP&A Act 1979) is considered to be met. Through consultation with DPIRD Fisheries, the proposed design has gone through a number of iterations, and a design was chosen that will not be an impediment to fish passage and the existing blockage will be removed.

In response to the assessment of the first concept design by AEP and following consideration of comments from NSW Fisheries, the proposed structure was redesigned to incorporate part bridge, part culvert and part causeway replacement as shown in **Figure 2** and shown in plans accompanying the Development Application.

Figure 2 – Elevation of Proposed Structure

Source: Matrix Thornton 13.3.24
North ^



It is submitted that the proposed structure now complies with the requirements of the Fisheries Management Act 1994 and the impact on the Purvis' Turtle and Southern Purple Spotted Gudgeon are now negligible given the increase in flow velocity and removal of fish barriers

7. Gloucester Local Environmental Plan 2010

The site of the culvert replacement is zoned RU1 Primary Production Under the Gloucester Local Environmental Plan 2010 (LEP 2010).

The objectives of the RU1 zone are:

- To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.
- To encourage diversity in primary industry enterprises and systems appropriate for the area.
- To minimise the fragmentation and alienation of resource lands.
- To minimise conflict between land uses within this zone and land uses within adjoining zones.
- To encourage eco-tourism enterprises that minimise any adverse effect on primary industry production and the scenic amenity of the area.

The replacement of the causeway will enable the attainment of the objectives of the zone.

2414 The Thunderbolts Way is used for Agriculture. Agriculture is a permissible use in the RU1 Zone. The provision of the replacement of the causeway is considered to be ancillary to the use of adjoining land for agricultural purposes.

8. State Environmental Planning Policy (Biodiversity and Conservation) 2021

The Biodiversity and Conservation SEPP commenced on 1 March 2022. This SEPP consolidated 11 other SEPPs within this SEPP on 1 March 2022. The State Environment Planning Policy (Koala Habitat Protection) 2021 (BC SEPP) was one SEPP that was consolidated within the Biodiversity and Conservation SEPP 2021 under Chapter 4 – Koala Habitat Protection 2021. No policy changes were made as part of the consolidation nor did the legal effect of the existing SEPPs, with section 30A of the Interpretation Act 1987 applying to the transferred provisions. The consolidation was undertaken in accordance with section 3.22 of the *Environmental Planning and Assessment Act 1979*.

The Biodiversity and Conservation SEPP 2021 aims to encourage the conservation and management of areas of natural vegetation that provide habitat for Koalas to support a permanent free-living population over their present range and reverse the current trend of Koala population decline.

No vegetation is proposed to be impacted by the proposed development; therefore, no further assessment is required.

9. Gloucester Development Control Plan 2010

There are no provisions of Gloucester Development Control Plan 2010 that are relevant to the proposed development.

10. Environmental Assessment

Vegetation

There will be no trees removed for the proposed development.

Acid Sulfate Soils

The site is not classified as ASS land under the provisions of Gloucester LEP 2010. There will be no disturbance of ASS soils necessary to complete the development.

Contamination

The subject land is identified as not potentially contaminated on Council's mapping.

Aboriginal Heritage

There are no known Aboriginal heritage items on the land. A search of the Aboriginal Heritage Information Management System (AHIMS) was carried out on 10 April 2025 and confirmed that there are no recorded Aboriginal sites or places at the proposed bridge location (search result attached).

Bushfire

The site is classified as bushfire prone buffer on Council's mapping. The provisions of Planning for Bushfire Protection (RFS 2019) does not apply to the proposed development. The replacement of the causeway is however critical to facilitate safe egress from Lot 64 in the event of a bushfire and safe access for fire fighting vehicles.

Traffic

The proposed development will have no adverse traffic impact.

Flooding

The site is classified as flood affected as identified on Council's mapping. The proposed causeway replacement will be designed to withstand significant flood events that will occur at the site in the future.

Department of Planning, Housing and Infrastructure

Our ref: 24/02308#01

Mr Tony Fish
Midcoast Town Planning
PO Box 468
TAREE NSW 2430

Sent via email to tfish@midcoasttownplanning.com.au

26 February 2025

Subject: Presumptive Title – Lot 643 DP1295152 and Lot 2 DP812807 at Tibbuc

Dear Mr Fish,

I refer to your application for Landowner's consent to upgrade a causeway across the Manning River, between Lot 643 DP1295152 and Lot 2 DP812807, at Tibbuc. Before assessing Landowners consent, an *Ad Medium Filum Aquae* search was required to determine the ownership of the bed of the Manning River.

Ad Medium Filum Aquae

As a general rule, if a Crown Grant of land which is bordered by a non-tidal stream was issued before May 3, 1918 (when the beds of creeks and rivers in NSW's Central and Eastern Divisions were reserved to the Crown), the *Ad Medium Filum Aquae* rule may apply. This means, the landowner may be presumed to own up to the middle of the respective creek or river. This presumption stands unless there is clear evidence in the land title documents or surrounding circumstances that a different boundary was intended (i.e. the bank of the waterway).

Search Results

At the location of the project, the Manning River is non-tidal. Historical searches of Lot 643 DP1295152 and Lot 2 DP812807 have determined the original title boundaries of both lots where they front the Manning River, do extend to the middle thread of the river by means of presumptive title (via the '*Ad Medium Filum Aquae*' rule).

The title plans for the former portions which make up Lot 643 and Lot 2 clearly show the bank of the river as the portion/allotment boundary. However, the relevant, original Crown grants were issued prior to the 3 May 1918, being the date when the waterway was gazetted as Crown waterway.

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- The original Crown grant for Lot 643 (formerly Portion 6 then Portion 44, within the Parish of Crosbie, County of Gloucester) was granted on 29 May 1906
- The original Crown grant for Lot 2 (formerly Portion 62, within the Parish of Woko, County of Hawes) was granted on 1 June 1905. This presumption also applies to area adjoining the current public road, as the relevant title (grant of Portion 62) was issued prior to the road's creation/opening in 1973.

From this information, I am confident that both Lot 643 and Lot 2 do enjoy presumptive title to the middle thread of the Manning River under the provisions of Section 45A of the *Real Property Act* 1900. On that basis, I do not consider the bed of the Manning River between the documentary title boundary and the middle thread to be Crown land.

This presumption stands unless there is clear evidence in the land title documents or surrounding circumstances that a different boundary was intended. In this case, no such evidence exists, and a challenge to this presumption is considered highly unlikely.

It should also be noted that the Crown does not have an interest in the road through Lot 2. This road was declared a public Council road within the NSW Government Gazette dated 7 December 1973

As the land is not Crown land, Crown lands have no interest in any proposed activity. However, the following should be noted.

Important Notes

- (1) This letter simply determines the Crown's interest, if any, and does not constitute legal advice as to the ownership of the lands.
- (2) The physical location of the bed and centre thread of the creek or river can only be determined by survey. Formal claims to the centre line of the must be made in all cases to NSW Land Registry Services, Legal Division. As such, this letter does not constitute legal advice.
- (3) No further searching from the Crown Grant has been undertaken. That is, the chain of title has not been researched to check for a rebuttal.
- (4) This advice is only in relation to Lot 643 DP1295152 and Lot 2 DP812807. Each freehold parcel of land adjoining a non-tidal creek or river is unique and a thorough examination of the history of the original grant of the title to the land is required as evidence to necessitate the existence of presumptive title.
- (5) The proposed works/activities are subject to the requirements of various other pieces of legislation. It is the responsibility of the holder of a Cultivation Consent to obtain any appropriate

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information and to observe any requirements of these other laws. These include (but are not necessarily limited to) the:

- a. Water Management Act 2000- authorisation for water supply and works approvals from the WaterNSW; and
- b. Environmental Planning and Assessment Act 1979 / Local Environment Plans- development consent from your local Council.

If you have questions regarding this letter, please contact Miranda O'Brien, Senior Natural Resource Management Officer by emailing miranda.obrien@crownland.nsw.gov.au

Yours sincerely,

A handwritten signature in black ink, appearing to be "Miranda O'Brien", with a horizontal line extending to the right.

Miranda O'Brien

Senior Natural Resource Management Officer - Hunter

Department of Planning, Housing and Infrastructure – Crown Lands

Anthony Fish

Date: 10 April 2025

328 Saltwater Road

Wallabi Piont New South Wales 2430

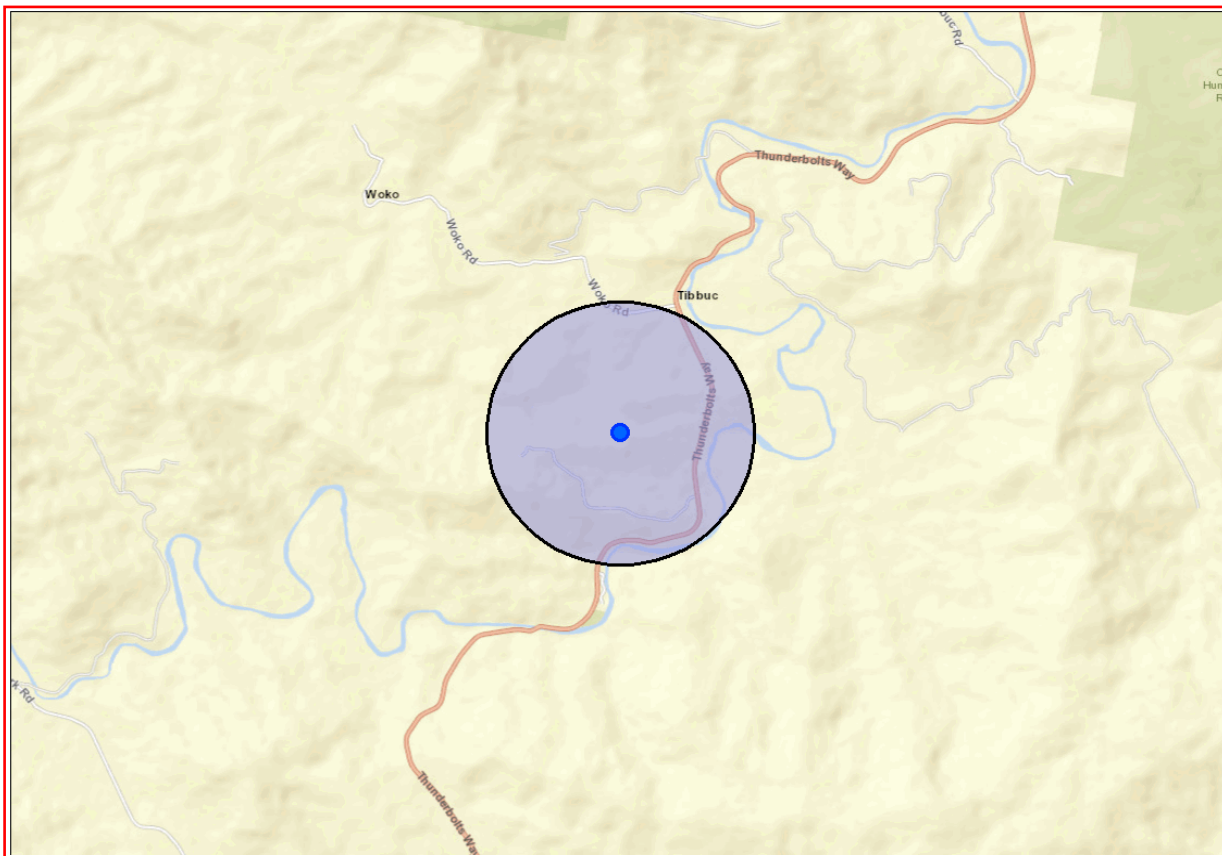
Attention: Anthony Fish

Email: tfish@midcoasttownplanning.com.au

Dear Sir or Madam:

AHIMS Web Service search for the following area at Address : 2490 THUNDERBOLTS WAY TIBBUC 2422 with a Buffer of 1000 meters, conducted by Anthony Fish on 10 April 2025.

The context area of your search is shown in the map below. Please note that the map does not accurately display the exact boundaries of the search as defined in the paragraph above. The map is to be used for general reference purposes only.



A search of Heritage NSW AHIMS Web Services (Aboriginal Heritage Information Management System) has shown that:

0	Aboriginal sites are recorded in or near the above location.
0	Aboriginal places have been declared in or near the above location. *

If your search shows Aboriginal sites or places what should you do?

- You must do an extensive search if AHIMS has shown that there are Aboriginal sites or places recorded in the search area.
- If you are checking AHIMS as a part of your due diligence, refer to the next steps of the Due Diligence Code of practice.
- You can get further information about Aboriginal places by looking at the gazettal notice that declared it. Aboriginal places gazetted after 2001 are available on the [NSW Government Gazette \(https://www.legislation.nsw.gov.au/gazette\)](https://www.legislation.nsw.gov.au/gazette) website. Gazettal notices published prior to 2001 can be obtained from Heritage NSW upon request

Important information about your AHIMS search

- The information derived from the AHIMS search is only to be used for the purpose for which it was requested. It is not to be made available to the public.
- AHIMS records information about Aboriginal sites that have been provided to Heritage NSW and Aboriginal places that have been declared by the Minister;
- Information recorded on AHIMS may vary in its accuracy and may not be up to date. Location details are recorded as grid references and it is important to note that there may be errors or omissions in these recordings,
- Some parts of New South Wales have not been investigated in detail and there may be fewer records of Aboriginal sites in those areas. These areas may contain Aboriginal sites which are not recorded on AHIMS.
- Aboriginal objects are protected under the National Parks and Wildlife Act 1974 even if they are not recorded as a site on AHIMS.
- This search can form part of your due diligence and remains valid for 12 months.