

TITLE: [PR-CM] Combined Development Application and Planning Proposal for expansion of the BP highway service centre at Chinderah (southbound lane)

SUBMITTED BY: Strategic Planning and Urban Design

FILE REFERENCE: PP15/0001

Valid



Civic Leadership



Strengthening the Economy

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

SUMMARY OF REPORT:

Council received a combined request for a planning proposal and development application, under s.72J of the *Environmental Planning and Assessment Act 1979*, in November 2010. This Report deals exclusively with the planning proposal.

The intent of the Applicant's application is to enable redevelopment and expansion of the existing BP highway service centre, located at Pacific Highway/Tweed Coast Road intersection in Chinderah. The need for redevelopment and expansion of the highway service centre is linked to traffic safety on the southbound carriageway, where at times congestion caused by lack of movement around the current truck refuelling and parking areas backs-up traffic along the 'off' slip lane into the site. The proposed expansion of the centre is designed to free-up movement by allowing construction of a new designated truck park and modification of the refuelling area, along with a new area for caravan parking, which will permit greater traffic separation and generally better flow within the site.

An initial review of the Application identified an unacceptable level of encroachment into an environmentally sensitive area of the site. This resulted in a notable amendment to the design and footprint of the proposal through positive negotiation with the Applicant (BP Australia Pty Ltd) that has resulted with the future protection of those areas, to the point that the proposal is now considered suitable.

The land under consideration is zoned RU2 Rural Landscape under the *Tweed Local Environmental Plan 2014* (LEP). Highway service centres are a prohibited land-use in all zones and therefore it is proposed to amend the lands zoning to IN1 General Industrial, to reflect the general nature of the lands use and to be consistent with adjoining developed land, as well as to include within Schedule 1 "Additional Permitted Uses" the land-use definition for a "Highway Service Centre", which will extend permissibility only to the land described.

The detailed assessment and any additional studies relating to the Applicant's application will commence following an affirmative resolution of the Council to prepare a planning proposal. This report does not relate to the assessment or determination of the development application and cannot be construed in any way as approving or implying an approval, acceptance or support for any aspect of it, as that is a separate process that will be assessed and reported independently.

A 'Costs Agreement' has been executed between Council and the Applicant. This ensures all costs arising in association with preparing the planning proposal and making of the amended LEP are borne by the Applicant. Demonstrating their commitment to the proposal the first funding instalment under the Agreement has been paid.

This report concludes that there are no identified significant engineering or planning matters that would prevent future development of the site as proposed. This report recommends that a planning proposal be prepared for a Gateway Determination referral.

RECOMMENDATION:

That :

- 1. A planning proposal, pursuant to s.55 of the *Environmental Planning and Assessment Act 1979*, to facilitate redevelopment and expansion of the highway service centre on Lot 1 DP 1127741 and Lot 2 DP 1010771 be prepared and submitted for a Gateway Determination, as administered by the NSW Department of Planning & Environment.**
- 2. The Minister for Planning or their Delegate be advised that Tweed Council is not seeking plan making delegations for the planning proposal.**
- 3. The Minister for Planning or their Delegate be requested that the minimum exhibition period for joint exhibition of the Planning Proposal and corresponding Development Application (DA10/0737) should be for a period not less than 28 days and should be concurrent.**
- 4. On receipt of the Minister's Gateway Determination Notice to proceed any 'conditional' requirements of the Minister and any other study or work required by Council for the purpose of making a proper determination of the lands suitability are to be completed, and included within the public exhibition material.**
- 5. Following public exhibition of the Planning Proposal a report is to be submitted to Council detailing the content of submissions received and any proposed amendment(s).**

REPORT:

1. Background

In November 2010, BP Australia submitted to Council a joint Development Application and request for a Local Environmental Plan (LEP) amendment (planning proposal) to enable the eastward expansion of the existing BP Chinderah Highway Service Centre. The development application seeks a number of alterations to the existing service station and refuelling layout (currently located on Lot 2 DP 1010771), however the primary focus of the application was to construct approximately 37 truck parking bays and associated manoeuvring areas through expansion to the adjoining Lot 1 DP 1127741. The LEP amendment seeks

- An amendment in zoning of Lot 2 DP 1010771 to the IN1 General Industrial Zone
- An amendment in zoning of Lot 1 DP1127741 to part IN1 General Industrial and Part E2 Environmental Conservation
- An 'Additional Permitted Use' to permit Highway Service Centre for both lots where zoned IN1.

The remainder of Lot 1 DP 1127741 has significant vegetation and contains endangered ecological communities (EEC). It is proposed that this area be recommended to be zoned E2 Environmental Conservation under the LEP 2014, subject to the support of the Department of Planning and Environment (DP&E).

Initial concerns were raised with the proponent regarding flooding, stormwater, access, parking, noise and ecology, as reported to the Council meeting of 15 May 2012, where Council resolved to defer determination of the application. Additional information was submitted soon after this resolution which satisfactorily addressed all concerns, with the exception of ecology.

A report was prepared to Council's meeting of 1 May 2014, recommending refusal of the application as ecological issues remained outstanding. Council resolved to defer determination for a workshop, which was conducted on 22 May 2014. The Outcome of the workshop was that the development application is pursued further, subject to reconfiguring the development footprint to provide adequate buffers to adjoining EEC.

Post the workshop, additional information has been submitted by the proponent, along with amendments to the proposed design, specifically, a reduction of the number of truck parking spaces to 30, reduced manoeuvring area footprint, buffer areas of at least 20m from identified EEC and proposed habitat restoration areas. Council's Natural Resource Management officers are now satisfied that the proposal can advance on this basis.

2. The Planning Proposal

Whilst the development application has undergone a public exhibition process and the merits of the development application primarily assessed, the Planning Proposal process to amend the LEP has not progressed to the Gateway Panel for a Gateway Determination in light of the previously prohibitive ecological concerns.

To facilitate the best planning outcome, the Planning Proposal document, prepared by the Strategic Planning and Urban Design Unit, recommends the following amendments to the LEP 2014:

- Amendment to the Land Zoning Map to rezone Lot 2 DP 1010771, being the existing service centre site, and part of Lot 1 DP 1127741, being the site proposed for the expansion, from the RU2 Rural Landscape to the IN1 General Industrial zone,
- Amendment to the Land Zoning Map to rezone the remainder of Lot 1 DP 1127741 from RU2 Rural Landscape and Deferred Matter (thereby remaining part 1(a) Rural and Part 7(a) Environmental Protection (Wetland and Littoral Rainforest under the Tweed LEP 2000) to E2 Environmental Conservation,
- Additional entry to Schedule 1 Additional Permitted Uses to enable a Highway Service Centre to be permitted on the site,

- Amendment to the Land Application Map to include Lot 1 DP 1127741 entirely within the Tweed LEP 2014,
- Amendment to the Lot Size Map to apply standard lot size control for the IN1 General Industrial zone.

The location of highway service centres are planned and to some extent regulated by both DP&E and NSW Roads and Maritime Services (RMS). The existing BP Service Station site is identified within Ministerial Direction 5.4 *Commercial and Retail Development along the Pacific Highway, North Coast*, which identifies State supported highway service centre locations. Whilst it is an option to include "Highway Service Centre" as a permitted use within the IN1 land use table, this would apply to all IN1 zones within the Shire, as opposed to restricting permissibility to this specific site, and as there are no other 'planned' sites inclusion of the definition within the general land-use table is not warranted.

The proposed LEP amendment does not require a change to the maximum building heights or maximum floor space ratio provisions.

3. Mapping

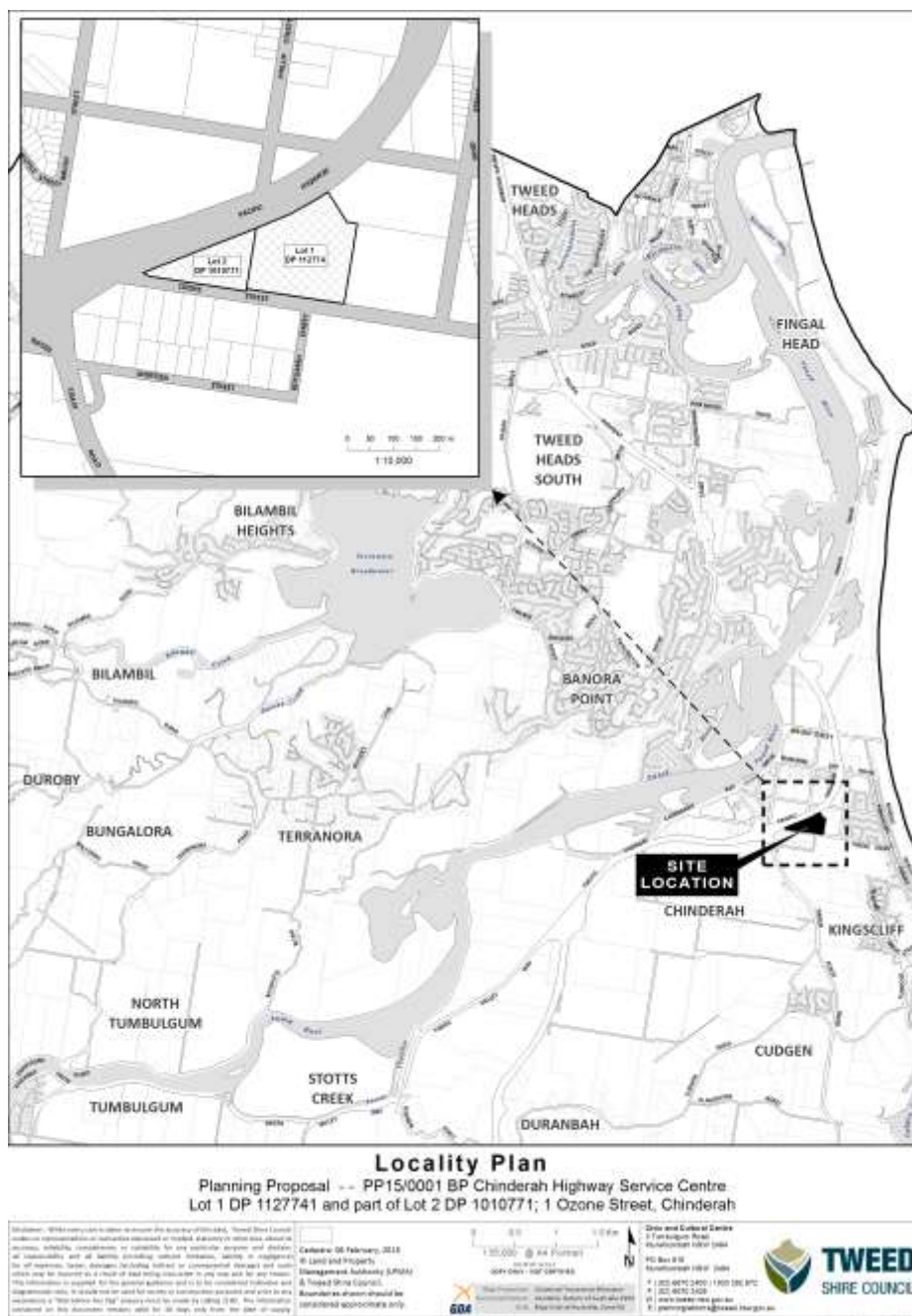


Image 1: Locality plan



SOURCE:
Aerial imagery was captured on
08:10:00 May 2012 ©AAMP Pty Ltd

Aerial Photo - taken May 2012

Planning Proposal -- PP15/0001 BP Chinderah Highway Service Centre
Lot 1 DP 1127741 and part of Lot 2 DP 1010771; 1 Ozone Street, Chinderah

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Cadastral: 06 February, 2015
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Image 2: Aerial photography of the subject site

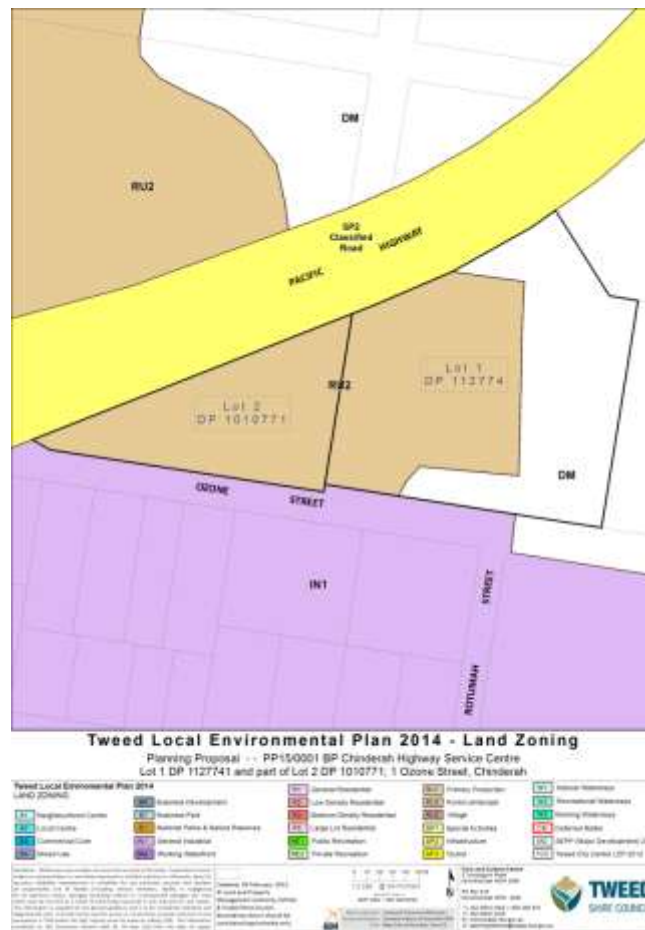


Image 3 - Current zoning of the subject site under LEP 2014

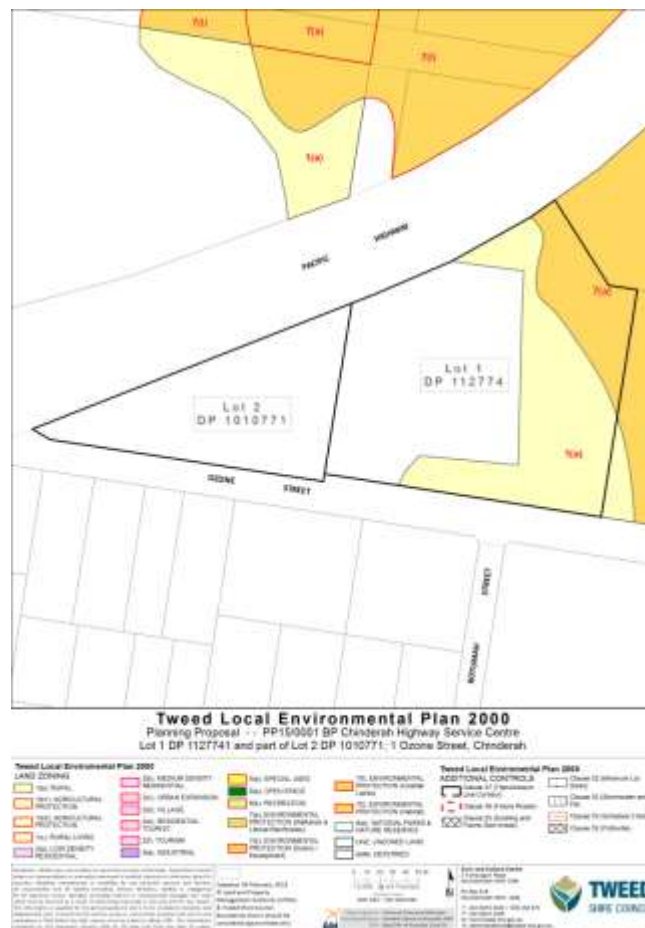
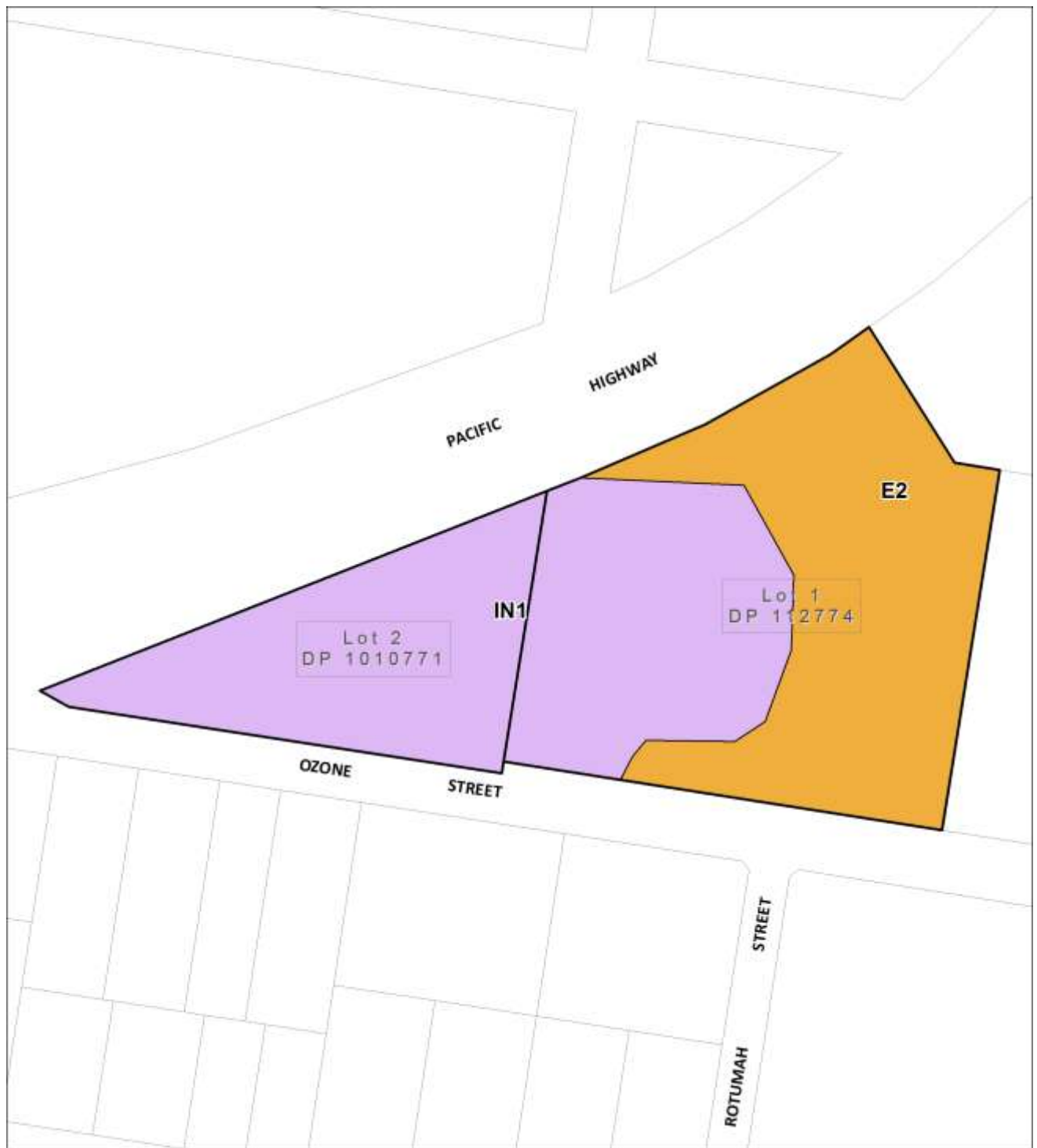


Image 4 - Current zoning of the subject site under the LEP 2000 (as deferred from LEP 2014)



Proposed Amendment LEP 2014 - Land Zoning

Planning Proposal -- PP15/0001 BP Chinderah Highway Service Centre
 Lot 1 DP 1127741 and part of Lot 2 DP 1010771; 1 Ozone Street, Chinderah



Image 5 - Proposed zoning of the subject site under the planning proposal amendment

4. Key Matters Addressed Within The Planning Proposal Request

4.1 Expected impact of the Northern Councils E-zone review on zoning of the subject site

The review of environmental zones in the Far North Coast region has been initiated by DP&E to inform councils on the application of environmental zones and environmental overlays. In May 2014, an interim report, prepared by consultants engaged by the DP&E was released for public exhibition, and remains under review. Once finalised it is expected that a new Ministerial direction will be issued detailing the criteria to be applied for evaluating the use and application of the E2 Environmental Conservation or E3 Environmental Management zones. There is no indication from DP&E as to when this might be expected.

In the meantime it is noteworthy that the exhibited interim report contained recommendations relevant to the zoning of the site subject to this planning proposal:

- environmental zones should only be applied to those areas which have important environmental values, based on validated ecological evidence,
- E2 and E3 zoning should only be applied where there is proven evidence of significant environmental values that meet the specific criteria,
- land that does not meet the criteria should be zoned according to its primary use.

Although the subject land demonstrates environmental attributes befitting an environmental zoning the DP&E has shown an unwillingness to entertain any environmental zoning change until the Government issues its directions.

Notwithstanding the above, a recent planning proposal finalised in the Byron Shire (amendment (513) in August 2014 by DP&E) resulted in the E2 Environmental Conservation zone being applied over a site that demonstrated consistency with the recommendations of the exhibited interim report and which had the support of the landowner. It is the Officer's view that this precedence provides an opportunity to also seek the application of the E2 zone in this instance, as the same criteria or 'standards' are being fulfilled.

Should the DP&E refuse to support the use of the E2 zone on the subject site, an alternative zone will be sought to ensure that ecological qualities of the subject site are adequately protected, within the limits of the zonings available. This is likely to be RE2 Private Recreation.

4.2 Proximity to endangered ecological community

The part of Lot 1 DP 1127741 located outside of the development footprint contains an ecologically sensitive site comprising an endangered ecological community (EEC). The following advice was received from NRM Unit in relation to this Planning Proposal:

NRM is of the view that the LEP amendment resulting from the planning proposal should rezone the land outside the development footprint line as E2 Environmental Conservation. This is the preferred outcome although this zone has been excluded from the LEP due to ongoing review of environmental zones.

and

NRM is of the view that an appropriate offset strategy remains to be resolved. This will include clarification of the impact associated with the revised development footprint and confirmation that an onsite offset can be achieved. Offsetting will be required to be undertaken as a development consent condition through the preparation of an offset management plan.

The required offset strategy will be required as part of the development application which is processed concurrent to this planning proposal.

4.3 Consistency of the proposal with the strategic planning framework

The planning proposal seeks to respond to the regional objectives identified within the NSW Far North Coast Regional Strategy by providing additional employment land, which is well-located adjacent the national highway infrastructure, buffered from the potential conflicts of residential development and seeks to improve the efficiency of the existing highway service centre and industrial node.

Currently containing approximately 28.5 ha of industrial-zoned land as well as the existing highway service centre, the West Kingscliff industrial node is ideally placed between the Pacific Highway, the Tweed Coast Road and the planned West Kingscliff growth footprint. Whilst the Pacific Highway is unlikely to undergo further expansion in the near future, Tweed Coast Road is planned to be expanded to 4-lanes and Kingscliff's population likely to increase to the upper limit of a Coastal Town, to close to, or to, a Coastal City scale (as defined within the Coastal Design Guidelines). The expansion of this employment node to the north-east seeks to unlock land to increase the critical mass and efficiency of the node, whilst the proposed environmental protection areas provide a logical footprint boundary. Expansion of this industrial node provides a contribution towards the 32,500 jobs required for the region, within an accessible location, whilst ensuring the scale and character of the nearby Kingscliff and Chinderah localities is not adversely affected.

This planning proposal is consistent with the following relevant Objectives of the Tweed Community Strategic Plan 2013-2023:

Objective 1.5 Manage and plan for a balance between population growth, urban development and environmental protection and the retention of economically viable agricultural land	The planning proposal balances the proposed development and needs of the natural environment by limiting the extent of the proposed industrial zone strictly within the development footprint. Land outside of the development footprint is proposed to be zoned E2 Environmental Conservation, and subject to the offset vegetation rehabilitation plan.
Objective 2.4 An integrated transport system that services local and regional needs.	The expansion of the service centre will improve road safety for south bound traffic by providing a safe place to stop and rest, particularly for heavy vehicles.
Objective 3.4 Provide land and infrastructure to underpin economic development and employment.	The service centre is a specialised land use that can only be located in a small number of places. Expansion of the existing site is critical to ensure safety of traffic and long-term viability of the highway service centre.
Objective 4.1 Protect the environment and natural beauty of the Tweed.	The service centre will not result in the loss of any significant habitat. It will not impact excessively on the scenic qualities of the area in the context of the existing interchange and adjacent industrial development. The development application accompanying the planning proposal will seek environmental enhancement through a habitat embellishment and management plan.

Compliance with the State Environmental Planning Policies and the Section 117 Direction has is discussed in more detail within Part 3A of the attached planning proposal document Version 1.

4.4 Flooding

According to the Hydraulic Investigation study prepared by Cardno in July 2010, filling of the development site will be required to ensure the truck parking area is flood free to the local Q_{100} flood level. According to this study, as there is enough freeboard to existing dwellings and the Pacific Motorway there are no adverse impacts anticipated by this proposed truck parking area.

4.5 Bushfire

A Bushfire Risk Management Plan (BushfireSafe, 2010) prepared for this planning proposal concluded that the proposed development will comply with the minimum requirements for:

1. Asset protection zones detailed in Table A2.5 Minimum Specifications for Asset Protection Zones for Residential and Rural Residential Subdivision Purposes (for class 1 & 2 buildings) in FDI 80 Fire Areas in the *Planning for Bushfire Protection Manual (RFS, 2006)*, and
2. Access in accordance with section 4.1.3-2 (Property Access) in the *Planning for Bushfire Protection Manual (RFS, 2006)*.

4.6 Cultural heritage

A Cultural Heritage Due Diligence Assessment was prepared by Converge Heritage + Community in 2010. No areas or objects of Aboriginal cultural heritage significance were identified within the project area.

4.7 Noise

Council has requested that a Noise Impact Assessment be prepared in relation to this planning proposal. The study will be placed on public exhibition along with other supplementary studies received by Council so far. The impact of noise on adjoining land is not considered to critically impact on the planning proposal, and ultimately development of the subject site, therefore the planning proposal can proceed to the Gateway Determination.

As outlined in Section 1 (Background) of this Report, the Hydraulic Investigation study, Bushfire Risk Management Plan, Cultural Heritage Due Diligence Assessment as well as other studies lodged with this planning application were assessed by relevant Council units and request for further information was sent to the Applicant. In response, additional information was provided by the applicant in mid 2012.

Following recent resolution to progress with this planning application, the Applicant was requested to update studies lodged in 2010 to reflect agreed changes to the development footprint and to include additional information provided to Council in 2012.

OPTIONS:

That Council:

1. Proceed with preparation of a planning proposal in accordance with the recommendations of this report; or
2. The report be deferred for a Councillor workshop or to seek further information;
3. Reject the proposal (noting that this will prevent an affirmative determination of the DA) and provide reasons for doing so, as these will be required to inform the DP&E and in the case of a Gateway Determination administrative review the Joint Regional Planning Panel (JRPP).

Council staff recommend Option 1.

CONCLUSION:

The Proponent has lodged a combined planning proposal request and development application for expansion of the BP highway service centre in Chinderah. The expansion is currently prohibited and requires amendment to the Tweed LEP 2014. The amendment is for both zoning and a change to the "Additional Permitted Uses" Schedule of the LEP to include the land-use definition of a "Highway Service Station".

The amendment seeks to apply an E2 Environmental Conservation zone over the remainder of Lot 1 DP 1127741 due to its environmental attributes. It is noted however, that this recommendation may not be supported by the DP&E due to ongoing review of the environmental zones. Should the E2 zone be rejected, Council will seek an alternative zone to protect the EEC present on the subject site.

Preliminary assessment has indicated that there are no significant site engineering matters to be addressed or finalised and the site appears capable of accommodating the expanded service centre, without significant adverse impacts to the broader community. It is also noted that the existing configuration of the entry to the site from the Pacific Motorway results in congestion on the motorway and poses high risk of accidents.

In conclusion, the preliminary assessment has not identified any matters that might otherwise present as a barrier to proceeding with a planning proposal and as such it is recommended that a planning proposal be prepared and forwarded to the DP&E for a Gateway Determination and subsequent public exhibition in accordance with an affirmative determination.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not applicable

c. Legal:

Not Applicable.

d. Communication/Engagement:

Consult-We will listen to you, consider your ideas and concerns and keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

Attachment 1.

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