

Draft Tweed LEP Amendment Number 97

**STAGE 1 PLANNING PROPOSAL
VERSION - Gateway**

420–434 Terranora Road, Terranora

September 2013

Council File PP12/0001

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Introduction

Purpose

Council is in receipt of a planning proposal request from the landowners to rezone Lots 2- 8 in DP28597, 420 – 434 Terranora Road, Terranora ('the site'). The request is supported by a Planning Proposal Report prepared by Planit Consulting Pty Ltd.

This Planning Proposal considers the rezoning of the site from 1(b1) Agricultural Protection to 2(a) Low Density Residential under Tweed Local Environmental Plan (LEP) 2000 to permit the construction of a dwelling on each lot, with a shared access driveway off Terranora Road.

Council resolutions and Departmental advice

This matter has been considered by Council on several occasions, firstly at the Council meeting of 21 March 2013 where it was recommended that the planning proposal be submitted for a Gateway determination conditional upon a stringent range of conditions, the motion was lost.

As a consequence, the landowner pursued their pre-Gateway appeal rights through the Department of Planning and Infrastructure (DP&I), who notified Council on 25 June 2013 that there may be merit in the proposal proceeding to a Gateway determination.

A subsequent assessment by the Northern Region JRPP resulted in Council receiving further advice from the DP&I dated 31 July 2013 asking Council to prepare a planning proposal. At its meeting of 19 September 2013 Council resolved to accept the role of RPA and for the planning proposal to be sent for a Gateway determination.

This report evaluates the strategic justification for the amendment to Tweed LEP 2000.

Part 1 Objectives and intended outcomes

Objective

To evaluate a change in zoning to enable the low density residential development of the site.

Intended outcome

To determine the suitability of rezoning of Lots 2-8 DP 28597, Terranora Road, Terranora from 1(b1) Agricultural Protection to 2(a) Low Density Residential under Tweed LEP 2000.

Site context and setting

The site is known as Lots 2-8 DP28597, 420–434 Terranora Road Terranora. Seven individual lots (each less than 900m² in area) with a total combined area of 6,020m² make up the site. None of the lots enjoy an entitlement for the erection of a dwelling.

An additional four small lots (one to the east and three to the west) make up the eleven small lots zoned 1(b1) Agricultural Protection north of Terranora Road with a total area of 1.005 hectares.

The site is located approximately 1.8 km to the east of Terranora village. The site is vacant and slopes steeply to the north away from Terranora Road. The land is essentially surrounded to the north, east and west by the Area E urban release area, which was rezoned from Agricultural Protection and non-urban zones to the 2(c) Urban Expansion zone under Tweed LEP 2000. The land to the south has been developed as large lot rural residential subdivision, known as 'Azure Estate'.

Figure 1 illustrates the site and its locality, whilst Figure 2 shows the aerial photo of the site and surrounds.

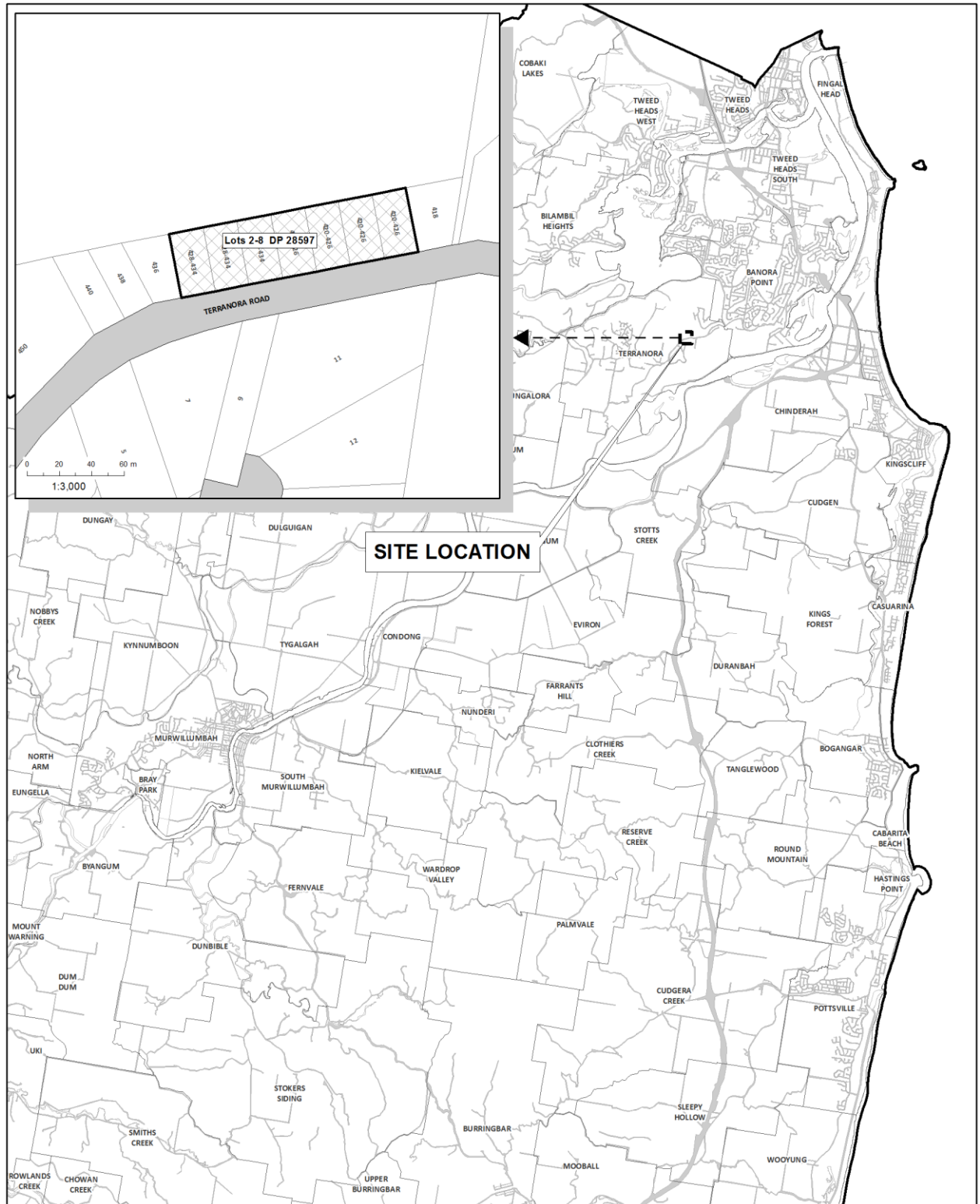


Figure 1. Locality Plan

Lots 2-8 DP 28597
Terranora Road, Terranora

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Map Projection: Universal Transverse Mercator
Horizontal Datum: Geodetic Datum of Australia 1956
Grid: Map Grid of Australia, Zone 56

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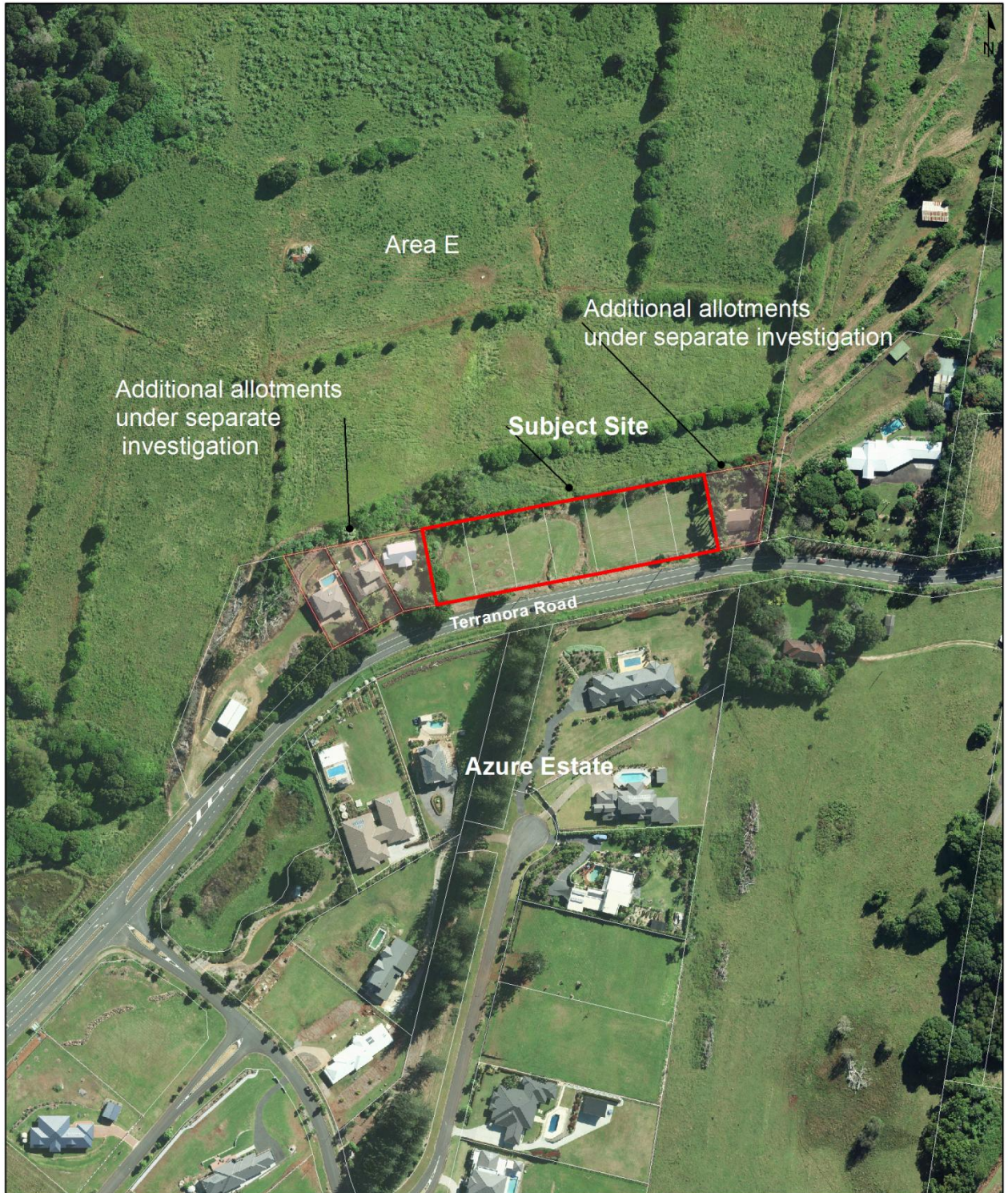


Figure 2. Aerial View of subject site and proposed additional allotments

Lots 2-8 DP 28597
Terranora Road, Terranora

SOURCE: Aerial imagery taken
May 2012 by AAM

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 Subject parcels
 Additional Allotments Proposed for Inclusion

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GDA Coordinate System
MGA Zone 56
Datum - GDA 84

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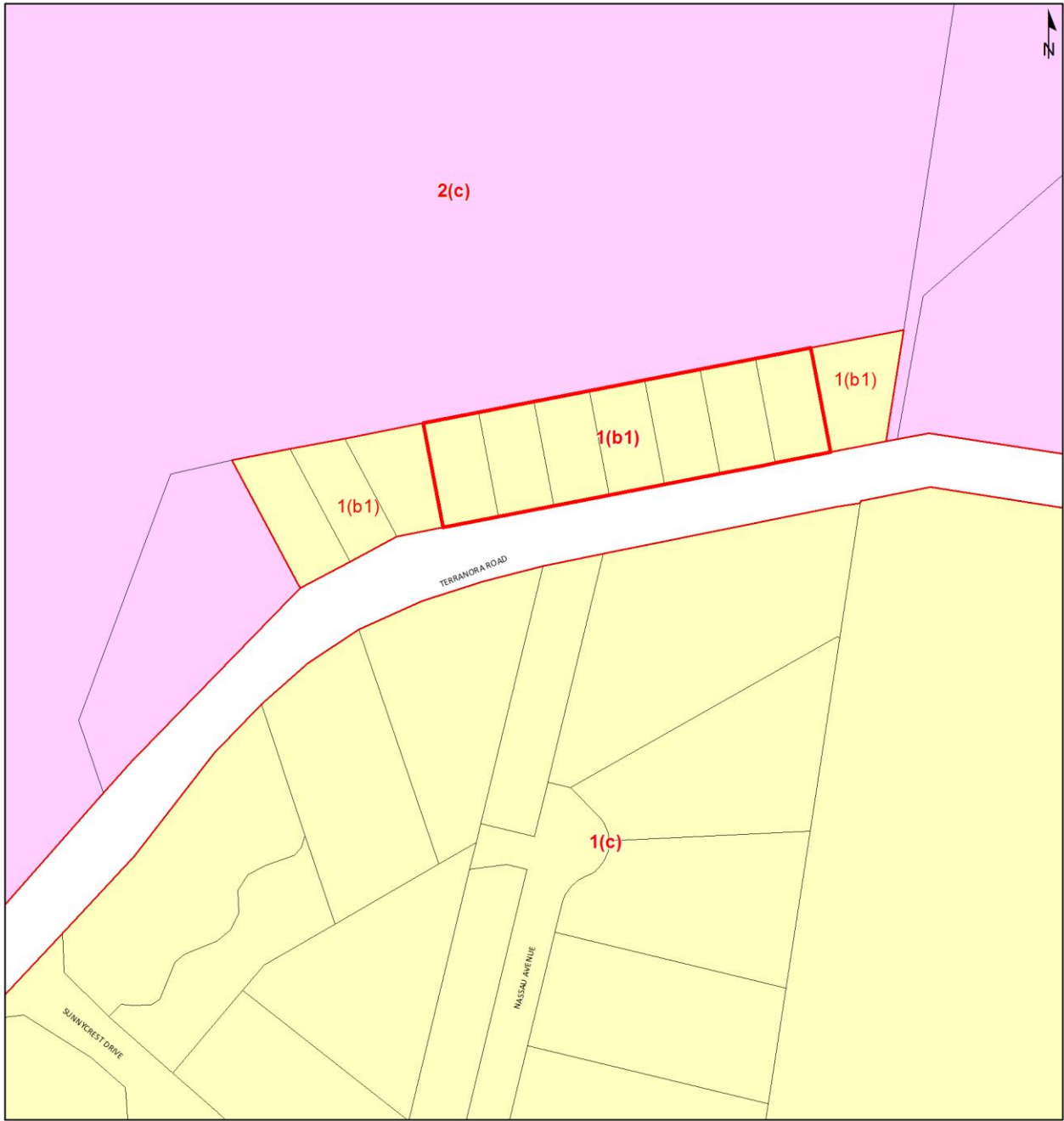
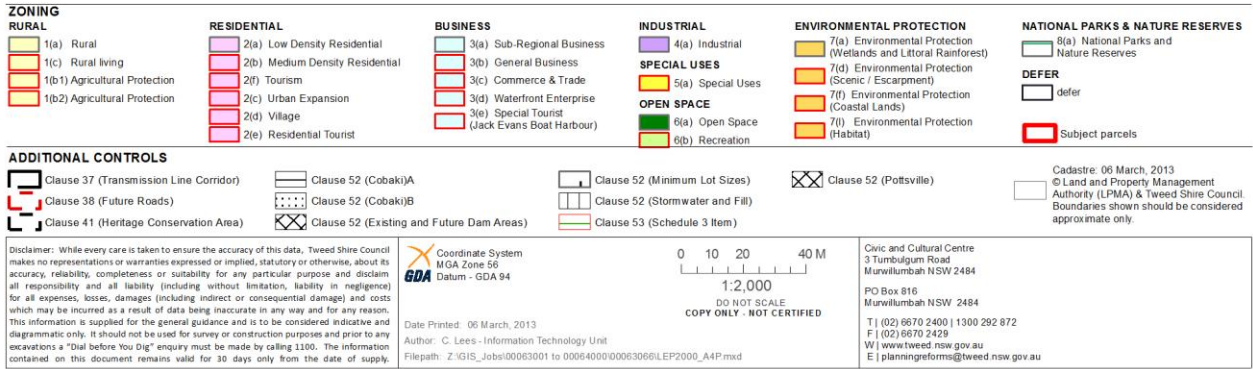


Figure 3. Tweed Local Environmental Plan 2000
Lots 2 - 8 DP 28597
Terranora Road, Terranora



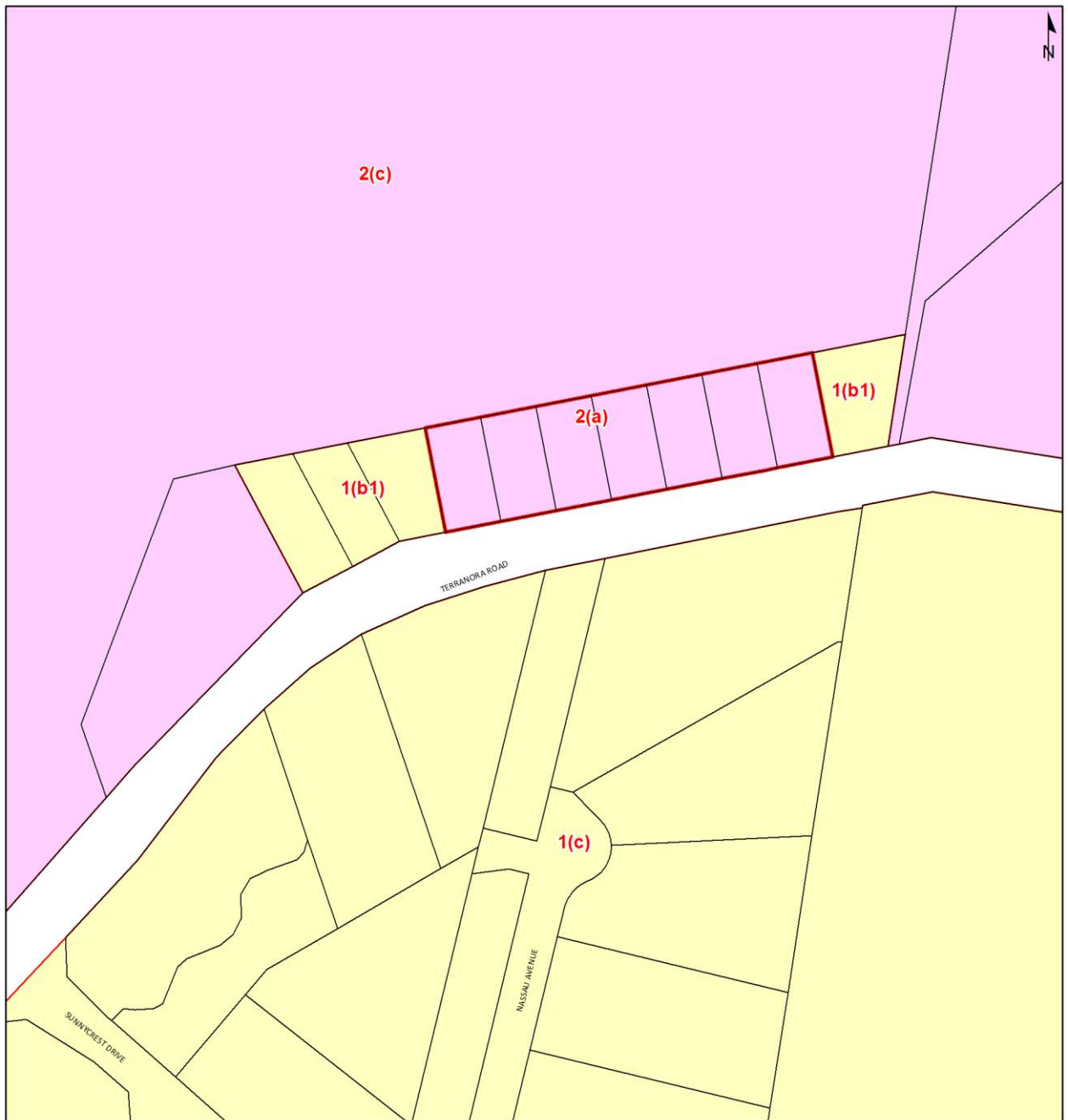
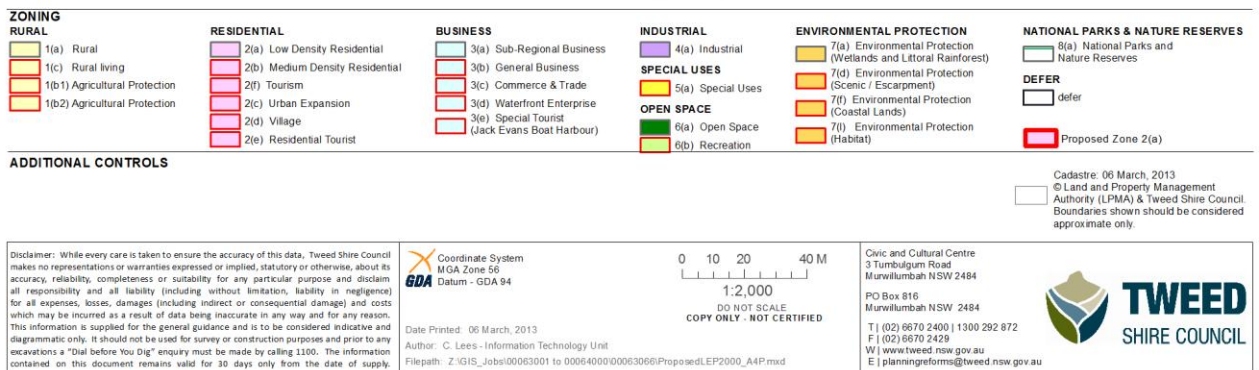


Figure 4. Proposed Tweed Local Environmental Plan 2000

Lots 2 - 8 DP 28597
Terranora Road, Terranora



Lots 2-8 DP 28597
Terranora Road, Terranora

ZONING												
RURAL		RESIDENTIAL		BUSINESS		INDUSTRIAL		ENVIRONMENTAL PROTECTION			SPECIAL USES	
 RU1	Primary Production	 R1	General Residential	 B1	Neighbourhood Centre	 IN1	General Industrial	 E1	National Parks & Nature Reserves		 SP1	Special Activities
 RU2	Rural Landscape	 R2	Low Density Residential	 B2	Local Centre			 E2	Environmental Conservation		 SP2	Infrastructure
 RU5	Village	 R3	Medium Density Residential	 B3	Commercial Core			 E3	Environmental Management		 SP3	Tourist
		 R5	Large Lot Residential	 B4	Mixed Use						 UL	Unzoned Land
				 B5	Business Development						 DM	Deferred Matters
									WATERWAYS			

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Author: S.Scott - Information Technology

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Planning controls – Current zoning

The site is currently zoned 1(b1) Agricultural Protection under Tweed LEP 2000. The zoning of land to the north of the site is 2(c) Urban Expansion, 1(b1) Agricultural Protection immediately to the east and west of the site and 1(c) Rural Living to the south of Terranora Road. Figure 3 shows the current zoning of the site and its surrounds.

Planning controls – Draft LEP 2012 proposed zoning

Draft LEP 2012 prepared in accordance with the Standard Instrument (Local Environmental Plans) Order 2006 ("the Template"), proposes to rezone the site from 1(b1) Agricultural Protection to RU1 Primary Production, whilst Area E is proposed to be rezoned R1 General Residential. Figure 4 shows the proposed zoning of the site and its surrounds under draft Tweed LEP 2012 as exhibited.

Planning controls – Tweed LEP 2000 Proposed amendment

The planning proposal request seeks to rezone the site from 1(b1) Agricultural Protection to 2(a) Low Density Residential under Tweed LEP 2000. Council has now formally exhibited Draft LEP 2012, consistent with the requirements of the Standard LEP template. Under Draft LEP 2012, the proposal would translate to R2 Low Density Residential. Figure 5 shows the proposed amendment to Tweed LEP 2000, the subject of this planning proposal.

Background

Area E has now been identified and zoned for future urban development and a Development Control Plan has been prepared and adopted but is not yet in effect.

The site did not form part of the environmental investigations into the suitability and capability of 'Area E'. Consequently, subsequent planning strategies such as the Far North Coast Regional Strategy (FNCRS) 2006 and Tweed Urban and Employment Land Release Strategy (TUELRS) 2009 have also excluded the site in their mapping.

The rezoning of Area E has effectively resulted in a small, fragmented (previously subdivided) rural zoned pocket of land surrounded by existing and proposed residential and rural residential development. The subject site cannot be reasonably, economically or productively used for agricultural uses, nor developed for residential uses due to existing allotment size restrictions and lack of dwelling entitlements.

Part 2 Explanation of provisions

This report considers an amendment to Tweed LEP 2000 in accordance with the proposed zoning map shown in Figure 5.

Part 3 Justification

The proponent has argued that the proposal is justified as the existing zoning is anomalous and that the site's omission from Area E was an oversight. It is also claimed that the attainment of the objectives of the *Environmental Planning and Assessment Act 1979*, primarily the orderly and economic development of the site, is restricted by the existing zoning.

A review of the planning proposal has been undertaken by GHD, consultants engaged by Council, and Council officers and a discussion of the issues presented below:

Scope of Planning Proposal

The proposal as presented addresses only 7 of 11 remnant rural zoned residential scale allotments along the northern side of Terranora Road. The seven allotments subject of this planning proposal

request are all vacant; however, one allotment to the east, and three to the west contain existing dwellings which were not included in the original planning proposal request; refer to Figure 2 above.

While it is considered reasonable to include all remnant allotments in the planning proposal, consistent with the objective of the *Environmental Planning and Assessment Act 1979* which seeks to promote and coordinate the orderly and economic development of land, owners of the adjoining developed land have not been consulted at this stage, and in line with Council's guidelines on community engagement and consultation, it is not appropriate to include them at this stage.

Due to the extent and significance of constraints affecting the site, which have not been addressed at this stage, and as discussed below, there is no guarantee that all constraints affecting the site can be addressed, and as such, until such time as these constraints are addressed to the satisfaction of Council, a final decision regarding whether the Planning Proposal should be amended to include these additional allotments, and/or proceed to public exhibition cannot be made.

This Planning Proposal is therefore submitted for an initial Gateway Determination on the understanding that Council is providing "Conditional Support" based on the expectation that all significant constraints affecting the subject site, and potential to expand the footprint of the Planning Proposal will be fully explored as part of the post-Gateway investigations, and addressed to the satisfaction of Council prior to public exhibition.

Constraints affecting the site

Constraints affecting the seven vacant allotments are significant and have the potential to prevent rezoning of the site; these constraints include:

- Lack of connection to Council's reticulated sewerage mains;
- Water supply;
- Stormwater management;
- Access to Terranora Road, and
- Visual amenity and scenic impact.

Sewerage

No reticulated sewerage or trunk drainage service is currently available to service the site. This planning proposal proposes a two stage approach to managing wastewater disposal, initially through pumping across Terranora Road into the system now servicing the Azure Estate on the top side of the road. Once development within Area E, on the downslope side of the site commenced, the Azure Estate line would be decommissioned and a gravity feed line connected into the system constructed to service downslope development. It is likely to be some considerable time before development within Area E could reach a point where this site could be connected.

The proponent asserts that there is capacity in the sewerage system servicing Azure Estate on the opposite side of Terranora Road and that the houses could be serviced by a pressure sewer system connected to the existing system servicing this area.

If Council were to permit this style of system, it would be on a temporary basis until the gravity sewerage reticulation became available in Area E. It would therefore be incumbent on any development of the site to provide the necessary gravity sewerage system within the subject land at development so that the system can be switched over and the pumped system decommissioned at some future date.

It should be noted that the sewerage system currently servicing adjoining development, including Azure Estate, and that would receive discharges should the subject site be connected to the existing Azure Estate system, is currently under stress both in the gravity system and in the downstream pumping systems. Development of a computer model of the entire catchment to Banora Point

Wastewater Treatment Plant is currently in progress which would enable Council to better consider the effects of added loads.

The downstream pumping stations and associated pressure and gravity mains are also under stress and may require significant upgrades before further loading can be added. In addition, there are reaches of the sewerage system within the catchment that are overloaded and an investigation into augmentation options has recently been initiated. This study should be completed within the next month and enable Council to better assess the ability of the site to be connected to this system.

Further investigations by the proponent are required into the ability of any development proposed for the site to be connected to Council's reticulated sewerage system along with resolution of other matters as listed below. Any solution acceptable to Council should be covered in a VPA to be prepared by the proponent which ensures that development does not occur until such time as connection to Council's sewerage mains is possible.

Water Supply

The proponent asserts that water supply and sewerage services can be provided but has not provided any detailed information on available capacity.

A 200 mm water main exists in Terranora Road at the frontage to the site and a domestic level supply could be made available to each lot. It is noted that the seven lots are rated as two individual properties and have been paying a water access charge. Accordingly, should more than two of the lots require a water service, Local Government Act S64 charges would apply to five of the seven lots.

Council's Water Unit has advised that there is overloading of the Rayles Lane Small Reservoir which has a theoretical supply for about 500 persons but currently has a load equivalent to 1000 persons. There is no current back-up generator and it is conceivable that it may run dry during a power failure coinciding with peak demand. The addition of this site would exacerbate this situation but Council's Water Unit intends to investigate solutions to this problem in the coming years as sections of Area E adjoining Terranora Road, and immediately adjoining the downslope side of this site, may also require service from the reservoir.

Further investigations into the ability of the site to be connected to Council's water supply will be required and resolved to the satisfaction of Council prior to public exhibition.

Stormwater

A significant upstream catchment discharges runoff onto the site through a 300mm pipe located under Terranora Road. Because of the soil type, slope and lack of vegetation in the flow lines, overland flow through the site has created significant gullies and scour areas as seen in Figure 6 below.

Recent heavy rain resulted in runoff from the catchment to sheet across Terranora Road at this location for more than 30 metres prior to scouring the shoulder of the road and entering the subject site. Surface flow must be addressed in any final proposal for the site and prior to any rezoning of the site.

The final proposal needs to address the risk of having a house located in an overland flow path. In addition, the design of the proposed shared driveway access conflicts with this outlet and means that the preservation of overland flow paths is not possible.

The engineering report accompanying the planning proposal request proposes upgrading the road drainage to cater for a major (100 year ARI) event, and continuing this piped system around the

driveway structure and through the site. This approach is hard to justify under Council's adopted drainage specifications and Subdivision Manual, which aim to preserve overland flow paths and not alter catchments significantly. Such alterations to the flow regime may also have significant downstream impacts by concentrating sheet flow, and further constrain the development of the already urban zoned land to the north.

Maintenance of the proposed drainage line would be problematic given the retaining walls and changes in grade that would be encountered.

As the planning proposal is contingent on such major drainage work, it is not supported in its current form.

Given the options identified above in addressing the access to the site and lot configuration, modifications would need to be made to the planning proposal to facilitate a drainage easement through the site. This easement could then accommodate both low flows through the existing 300mm pipe under Terranora Road and overland flow should the capacity of the pipe be exceeded and flood waters surge cross Terranora Road, as was the case recently. The ultimate location of this easement is likely to necessitate a reconfiguration and consolidation of the existing lots.

Any solution acceptable to Council would require a VPA to be prepared by the proponent ensuring that rezoning did not occur until such time as revised site plans demonstrated an ability to accommodate stormwater flows through the site without adversely affecting potential development on the site or downslope properties.



Figure 6 – Existing Scoured Drainage Line below Pipe under Terranora Road

Traffic and Access

The proponent concedes that individual driveway accesses to each lot would be unachievable due to the steep frontages and potential impacts on Terranora Road. A shared driveway from a single access point within a right of carriageway (ROW) is proposed to overcome this (see Figure 7).

An engineering design has been provided for this shared driveway. This is an extensive structure with tiered retaining walls up to 3.7m combined height (2.5m + 1.2m). The footprint of this structure is so significant it takes up over half the depth of many of the allotments, leaving little room for building pads and useable open space. The location of the driveway also interferes with existing piped and overland stormwater paths.

Maintenance of shared driveways is often problematic, and major issues are foreseeable with such significant retaining structures, slopes, landscaping etc.

The development of the site is constrained by the 30 metre setback requirement to Terranora Road, being a designated road. This eliminates almost the entire depth of these lots from buildings, but ensures that the operation of the designated road is not compromised and that traffic noise impacts are reduced for any development of the site. Despite this, existing dwellings adjacent to the site have been constructed well within the 30 metre setback. This setback would no longer apply following rezoning to residential.

The proposed access arrangements to Terranora Road are not supported.

Whilst the proposed access arrangements are not supported, a range of options may exist to relocate the shared driveway access, which may include relocation further to the west or provision of two separate driveway access points either side of the drainage line, thereby reducing the extent of cut and fill required to service proposed lots.

Given the difficulties identified for the proposed access, and potential for alternative locations which have not yet been explored, further investigation of alternative locations for site access should be explored by the proponent.

Should a suitable alternative access arrangement be designed that meets Council's requirements for the site, a VPA prepared by the proponent would be required to ensure that maintenance, and no future claims for access direct to Terranora Road from individual allotments created would occur.

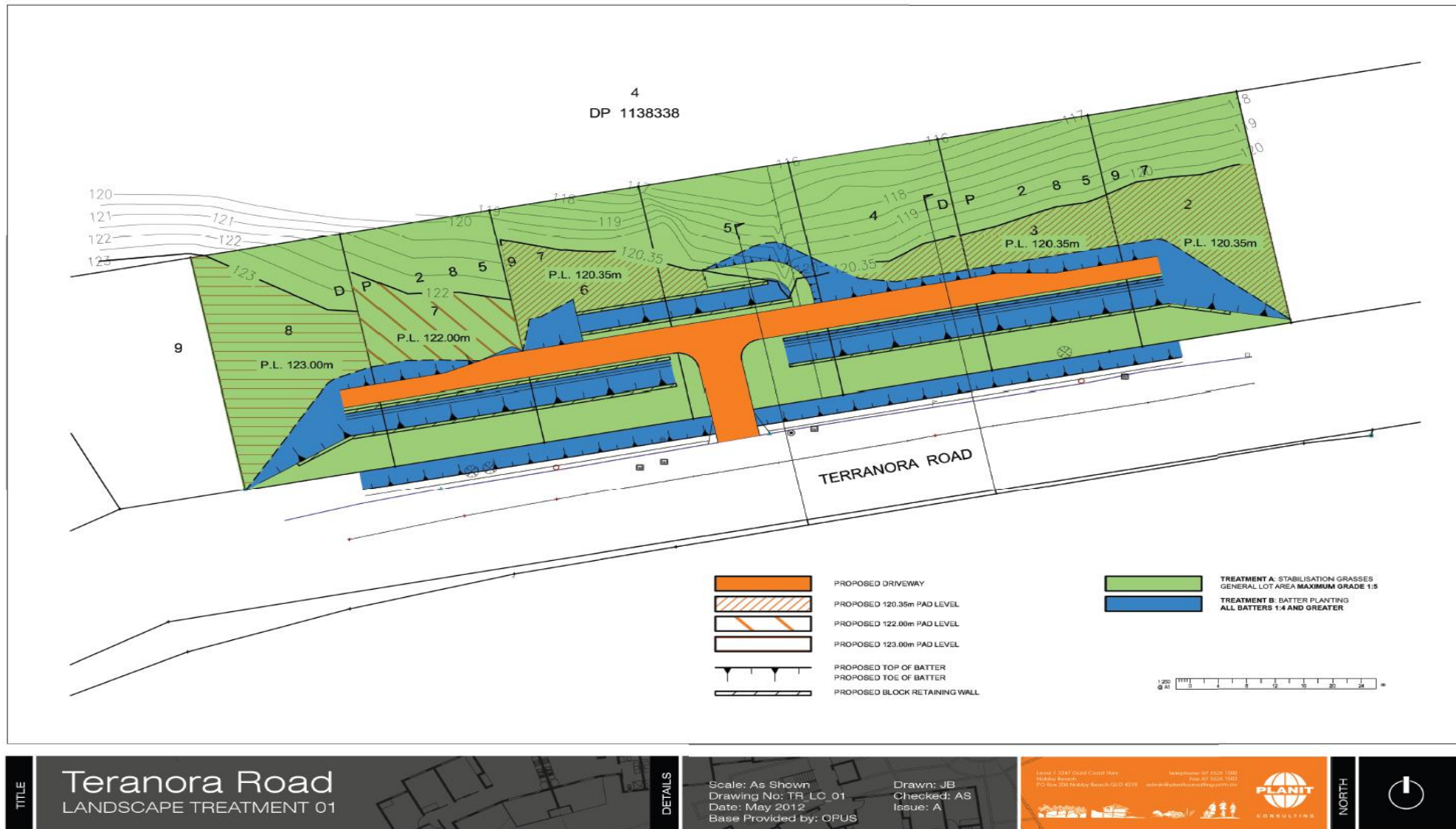


Figure 7 Proposed Development Concept Showing the Extent of earthworks on Each Proposed Allotment

Visual Amenity and Scenic Impact

Because the site is one of the last remaining undeveloped and un-vegetated sites adjoining the northern, downslope side of Terranora Road, passersby are able to experience extensive views across the site towards the Terranora Broadwater, Tweed Heads and the Gold Coast.

Terranora Road lies at approximately 127.5 metres Australian Height Datum (AHD) whilst the site slopes from 126.5 to 116 metres AHD. The proposed building pads nominated in the planning proposal are at 120.35 metres (Lots 2-6), 122 metres (Lot 7) and 123 metres AHD (Lot 8) respectively.

Tweed DCP 2008 allows a maximum building height of 9 metres for residential dwellings. Any dwellings constructed on the site to 9 metres in height would therefore extend to 129.35 metres (Lots 2-6), 131 metres (Lot 7) and 132 metres AHD (Lot 8) respectively.

Dwellings constructed to 9 metres in height on Lots 7 and 8 in particular would therefore obscure the views from Terranora Road towards the Terranora Broadwater, Tweed Heads and the Gold Coast. It should be noted however that Terranora Road, in the vicinity of the site, does not offer any public vantage points (ie. rest areas, lookouts, parking bays etc) to allow locals or visitors the opportunity to take advantage of this view and therefore this impact is not considered to require any mitigation.

The two dwellings (Lots 16 and 19 DP 1092500) immediately south, on the upslope side of Terranora Road within the Azure Estate which have views over the site have been constructed at approximately 131 metres and 130.5 metres AHD respectively. Views would continue to be available from these dwellings over Lots 2 – 6 with minor obstructions over Lots 7 and 8 should dwellings on these lots be built to the maximum 9 metre building height. Views would still be available between each dwelling on these lots in any case.

Given the limited impact the construction of any dwellings built to the maximum 9 metre height limit would have on any public vantage points or on any existing private dwellings, there is no requirement to place any restrictions on building heights for the site other than the standard maximum 9 metre height control.

Council's Urban Design specialist has prepared a building envelope plan to demonstrate the ability of allotments within the site to accommodate dwellings.

Further investigations will be required into building heights, materials, form and colour at the development application stage should the rezoning proceed.

Lot Configuration and Earthworks

The site currently comprises seven individual vacant lots (each less than 900m² in area) with a total combined area of 6,020m². As a result of the extensive earthworks required to accommodate the shared central driveway, only limited area exists for building pads and associated private open space within each of the middle allotments. The limited size of each building pad also restricts the type and form of dwellings on each lot (see Figure 7).

Given the particular constraints affecting the site, it is recommended that should the rezoning progress, a reconfiguration of allotment boundaries and some consolidation may be necessary to ensure that sufficient useable land is available for building pads and open space within each lot. Subject to the resolution of the shared access driveway (see comments below), this reconfiguration and consolidation, which may result in a reduction of allotments, need to be agreed by the proponent and be identified in a voluntary planning agreement (VPA) for the site (prepared at the proponent's expense) prior to public exhibition.

Should the rezoning proceed without such an agreement, then it would automatically infer a dwelling entitlement to each and every existing allotment regardless of the ability of each allotment to accommodate a dwelling or not. This would be highly undesirable given the extent and potential risks associated with development as discussed above.

Landscaping

From an ongoing maintenance point of view the proposed site works are very steep and close to the busy Terranora Road creating OH&S issues. It is recommended that as part of the overall site management and ownership, with a private road going through a number of private blocks, there must be a right of carriageway and any landscape works undertaken within Council's road reserve are to be maintained by the residents. Council would still retain all rights over the land and the landscaping but the day to day maintenance would be undertaken through an agreement with the residents and written into the title.

Summary of key constraints and recommendation to proceed

This initial request to Council to prepare a Planning Proposal seeks to have seven (7) vacant allotments (Lots 2-8 DP 28597) rezoned from 1(b1) Agricultural Protection to 2(a) Low Density Residential under Tweed LEP 2000.

The site is heavily constrained and cannot be supported in its current format; however, a range of options appear possible for a more limited but acceptable level of development, provided that the following constraints can be addressed to the satisfaction of Council:

- Access, either single or multiple access points;
- Stormwater management including piping, detention, dissipation prior to discharge off site and easements;
- Lot configuration and building envelopes;
- Water and sewerage servicing;
- Land contamination; and
- Aboriginal cultural heritage.

Should these constraints be addressed to the satisfaction of Council, prior to the plan being made it will be necessary for Council officers to negotiate the terms of a VPA which secures planning outcomes for the site. The VPA between Council and the landowner would need to address at least the following issues:

- Access to Terranora Road;
- Stormwater management;
- Water and sewerage servicing, and
- Allotment configuration and the number of allotments.

The use of a VPA is seen as a prime mechanism to secure planning outcomes and justify referral to the Department of Planning and Infrastructure for a Gateway Determination, for a site which would otherwise create potential risks to future buyers and Council. Unless a guarantee can be provided that manages the development potential and which ensures that critical site constraints are fully addressed, the planning proposal could not be supported and the rezoning should not proceed.

Section A Need for the planning proposal

Is the planning proposal a result of any strategic study or report?

No. The site has not been identified within the Town and Village Growth boundary of the FNCRS nor the TUELRS.

A change in land use zoning from 1(b1) Agricultural Protection to 2(a) Low Density Residential for the site is therefore inconsistent with the intent of local and regional planning strategies.

The site is located directly adjacent to Area E identified in Figure 19 of the TUELRS and could probably be justified against the sustainability criteria in the FNCRS provided access, stormwater and servicing constraints can be overcome.

The site is also very small (11 house lots) and in the scale of the FNCRS is of minor significance. The proposed change of zone does not undermine the FNCRS and achieves the overall intent of the strategy in that it provides for in fill housing in the Tweed Heads major regional centre and does not undermine the protection of resources or require significant new infrastructure.

Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Rezoning the site is considered to be the most appropriate means of allowing residential development as the lots which make up the site do not provide the minimum lot size required for the construction of a dwelling under the current 1(b1) Agricultural Protection zone. The rezoning cannot progress unless a VPA is prepared by the proponent and supported by Council that addresses the following issues:

- Shared driveway access that meets Council's requirements;
- Satisfactory stormwater arrangements;
- Satisfactory water and sewerage connections to each lot; and
- Consolidation of the several lots in order to achieve sufficient building area and useable open space within each lot.

Is there a net community benefit?

In accordance with the criteria established for the assessment of Net Community Benefit in the Department of Planning and Infrastructure's (DOP&I) guideline *Guide to Preparing a Planning Proposal*, an assessment of net community benefit has been undertaken against these criteria and is presented in Table 1 below. It should be noted that only criteria relevant to the proposal have been included.

Table 1 - Assessment of Net Community Benefit

Criteria	Compliance with Criteria
Would the LEP be compatible with agreed State and regional strategic direction for development in the area (e.g. land release, strategic corridors, development within 800 metres of a transit node)?	No. The site has not been identified within the Town and Village Growth boundary within the FNCRS. The site has also been excluded from the TUELRs. The FNCRS allows for inconsistency where they are minor and don't undermine the intent of the strategy. Given the small scale of this planning proposal it is regarded as minor. The rezoning of the site is dependent upon the satisfactory compliance of several issues relating to access, stormwater management, water and sewerage services and lot configuration and building envelopes.
Is the LEP likely to create a precedent or create or change the expectations of the landowner or other landholders?	Yes. The proposal would rezone the site from a rural to residential zoning changing the general expectation that the site is suitable for residential land uses and it is likely that neighbouring landowners would perceive the rezoning favourable to their own pursuits for their land. It may also negatively impact the expectation that Council will accept inferior access arrangements and temporary servicing for residential development.
Have the cumulative effects of other spot rezoning proposals in the locality been considered? What was the outcome of these considerations?	Yes. Consideration has been given to the long term functionality of Terranora Road as a result of the future development of Area E and the water and sewerage servicing requirements for the locality. It has been found that water and sewerage services in the area are experiencing capacity stress due to the amount of development in recent years. This stress may act to constrain the rezoning and ultimate development of the site for residential purposes.
Would the LEP impact upon the supply of residential land and therefore housing supply and affordability?	No. Should the rezoning be supported it would facilitate the residential development of up to seven lots.
(a) Is the existing public infrastructure (roads, rail, and utilities) capable of servicing the proposed site? (b) Is there good pedestrian and cycling access? (c) Is public transport currently available or is there infrastructure capacity to support future public transport?	(a) No. (b) No. (c) Yes. The planning proposal proposes a shared driveway from a single access point. Council engineers have advised that maintenance of shared driveways is often problematic, and major issues are foreseeable with such significant retaining structures, slopes, landscaping etc. The proposed access arrangements to Terranora Road are not supported, but other arrangements are plausible and need to be explored. No pedestrian and cycling access, apart from the existing road shoulder is available to the site. Public transport is available in the locality but with no off-road pedestrian and cycling facilities, or the provision for such facilities, the ability for future residents to safely access public transport would be problematic.

Criteria	Compliance with Criteria
Would the proposal impact on land that the Government has identified a need to protect (e.g. land with high biodiversity values) or have other environmental impacts? Is the land constrained by environmental factors such as flooding?	No. The site has been almost totally cleared of native vegetation as can be seen in the aerial image in Figure 2.
Would the LEP be compatible / complementary with surrounding land uses? What is the impact on amenity in the location and wider community? Would the public domain improve?	Yes. The site is essentially surrounded to the north, east and west by the Area E urban release area and existing residential development. The land to the south has been developed as a large lot rural residential subdivision, known as 'Azure'. No pedestrian and cycling access, apart from the existing road shoulder is available to the site.
(a) What are the public interest reasons for preparing the draft plan? (b) What are the implications of not proceeding at that time?	(a) Infill housing and better use of serviceable land (b) Should the land not be rezoned for a residential purpose, it would remain as rural zoned land unable to be farmed but surrounded by residential and urban land uses. It would be an irregular zone pattern that would be need to be revisited at some time in the future
The degree to which the policy and its objectives can be satisfied.	The planning proposal request seeks to amend Tweed LEP 2000. Whilst not strictly in accordance with the established local and regional planning strategies for the area, the site could be included subject to resolving access and servicing constraints.
The proposed level of accessibility to the catchment of the development by public transport, walking and cycling.	The locality is currently serviced by public transport and limited walking and cycling facilities. This infrastructure is likely to significantly improve as Area E is developed in future years.
The likely effect on trip patterns, travel demand and car use.	The site fronts Terranora Road, a designated road linking Terranora village with Banora Point and Tweed Heads. While the rezoning and subsequent development of the site would generate relatively negligible traffic, the proposed access arrangements to the site have the potential to have long term adverse impacts on the functionality of Terranora Road to service future development in the locality.

Section B Relationship to strategic planning framework

Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?

The site has not been identified within the FNCRS and is located outside of Area E in the TUELRs. The planning proposal is therefore considered to be inconsistent with the objectives and actions within these strategies. The FNCRS allows for inconsistency where they are minor and don't

undermine the intent of the strategy. Given the small scale of this planning proposal it is regarded as minor.

The rezoning of the site is dependent upon the satisfactory compliance of several issues relating to access, stormwater management, water and sewerage services and lot configuration and building envelopes.

Is the planning proposal consistent with the local Council's Community Strategic Plan, or other local strategic plan?

The Tweed Community Strategic Plan 2011/2021 (CSP) creates a framework to implement Council's four-year Delivery Program and annual Operational Plan, which would align the community's aspirations with the development and implementation of necessary planning and resourcing required to achieve the long term vision and deliver the outcomes.

Under the theme of People and Places, the CSP aims to promote the provision of a wide range of housing types in new and existing urban areas and to ensure the highest design standards for sustainability are used for buildings, streetscapes and public spaces.

Whilst the planning proposal would facilitate additional housing in the locality, the proposed access arrangements to the site has the potential to have long term adverse impacts on the functionality of Terranora Road to service future development in the locality. Options exist to resolve these long term adverse impacts subject to further investigations by the proponent and acceptance by Council.

Is the planning proposal consistent with the applicable State Environmental Planning Policies (SEPPs)?

The site is not affected by *SEPP 14 Coastal Wetlands* or *SEPP 26 Littoral Rainforest*.

The planning proposal is of a scale and nature that would not trigger the application of *SEPP (Major Development) 2007* or *SEPP (Infrastructure) 2007*.

Other SEPPs relevant to the planning proposal are addressed below:

SEPP 55 – Remediation of Land

This SEPP introduces planning controls for the remediation of contaminated land. The policy states that land must not be developed if contamination renders it unsuitable for a proposed use. If the land is unsuitable, remediation must take place before the land is developed.

The proponent has advised that the lots which make up the site were created by way of subdivision in 1958 and have remained vacant since this time. Prior to this time it is understood the area was used for grazing only due to site topography.

Given the limited information presented by the proponent, a Phase 1 assessment would need to be submitted prior to progressing the rezoning in accordance with the requirements of SEPP 55 – Remediation of Land.

SEPP (North Coast Regional Environmental Plan) 1988

Clause 7 – Prime Crop or Pasture Land: The site is zoned 1(b1) Agricultural Protection and has been identified as state significant farmland under the Farmland Mapping Project. Despite the site being identified as prime crop and pasture land, its value for agricultural purposes is significantly diminished by its fragmented nature and the potential for land use conflicts given the encroachment of residential and rural residential development around the site.

Clause 14 – Wetlands or Fisheries Habitat: There are no mapped wetlands in close proximity; however, any application for development of the site would require contemporary surface water management practices and facilities to ensure that runoff entering the local drainage network is of a high quality.

Part 3 Conservation of the environment: The site is almost totally disturbed containing little vegetation, as can be seen in the aerial image in Figure 2.

Division 3 Heritage: The matter of Aboriginal cultural heritage has not been considered. Pursuant to Council's Guideline – *Planning Proposal Process and Procedure – Amending a LEP*, an Aboriginal Cultural Heritage 'Due Diligence' Assessment ("an ACHA") must be prepared with a planning proposal. In addition to the bare requirement to prepare an ACHA it was resolved that the landowner is to prepare an assessment report, including consultation with the local Aboriginal Advisory Committee (AAC) and a response to any matters that arise, prior to a request for a planning proposal being made. The proponent would need to provide this additional information in order to progress the rezoning.

Clause 38 Plan preparation – urban land release strategy: Clause 38 requires a strategy to be prepared before preparing a draft local environmental plan that permits significant urban growth. This planning proposal would not result in significant urban growth as it would only allow the development of seven additional dwellings. However the site has not been identified in either the FNCRS or TUELRs.

Clause 42 Plan preparation – Housing principles: Clause 42 requires that a draft local environmental plan to permit dwellings in urban areas should require that development does not take place until Council is satisfied that the land on which the dwellings are to be erected is adequately serviced with water and sewerage disposal facilities. As previously discussed, the site is constrained by current water and sewerage services in the locality. Options exist to resolve these constraints subject to further investigations by the proponent and acceptance by Council.

Clause 45 Plan preparation – hazards: The main hazard at the site relates to potential contamination given the site's history for agricultural purposes. Limited information has been presented to address this matter and a Phase 1 assessment would be required before the rezoning could be progressed further.

SEPP (Rural Lands) 2008

As the site is considered state significant farmland, the planning proposal has been assessed against the Rural Planning Principles under SEPP (Rural Lands) 2008.

Rural Planning Principles

- (a) Promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas*
- (b) Recognition of the importance of agriculture and the changing nature of agriculture in the region*
- (c) Recognition of the significance of rural land uses to the state and rural communities including social and economic benefits*
- (d) Balance the social, economic and environmental interests of the community*
- (e) Identification and protection of natural resources, maintaining biodiversity, protecting native vegetation and water resources and avoiding constrained land*
- (f) The provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities*
- (g) Consideration of the impacts on services and infrastructure and appropriate location when providing for rural housing*

The value of agriculture to the Tweed Shire and local economy has been recognised in adopting the minimum lot sizes in rural zones. Tweed LEP 2000 and Draft LEP 2012 promote flexibility in permitting a wide range of rural land uses that can cater for change and emerging opportunities.

The planning proposal recognises that the site is fragmented and has been encroached upon by adjoining residential and rural residential development significantly diminishing its value for agricultural use. It has no long term future as agricultural land and minimal environmental values.

Is the planning proposal consistent with applicable Ministerial Directions (s117 Directions)?

Consistency with the relevant section 117 Ministerial Directions is assessed in Table 2 below:

Table 2: Consistency with section 117(2) Ministerial Directions

Application	Relevance to this planning proposal
1. Employment and Resources	
<u>1.2 Rural Zones</u>	
Applies when a relevant planning authority prepares a planning proposal that would affect land within an existing or proposed rural zone (including the alteration of any existing rural zone boundary) Under this direction a planning proposal must: (a) not rezone land from a rural zone to a residential, business, industrial, village or tourist zone. (b) not contain provisions that would increase the permissible density of land within a rural zone (other than land within an existing town or village).	The site has not been identified within the town and village growth boundary in the FNCRS. The FNCRS allows for variations where they are minor. This is a very small piece of rural land surrounded by urban development and the inconsistency is justified. The rezoning of the site is dependent upon the satisfactory compliance of several issues relating to access, stormwater management, water and sewerage services and lot configuration and building envelopes.
<u>1.3 Mining, Petroleum Production and Extractive Industries</u>	
Applies when a relevant planning authority prepares a planning proposal that would have the effect of: (a) prohibiting the mining of coal or other minerals, production of petroleum, or winning or obtaining of extractive materials, or (b) restricting the potential development of resources of coal, other minerals, petroleum or extractive materials which are of State or regional significance by permitting a land use that is likely to be incompatible with such development.	The planning proposal requests the rezoning of the site to 2(a) Low Density Residential. The 2(a) zone under Tweed LEP 2000 prohibits extractive industries and mines and is subject to the overriding provisions of State Environmental Planning Policies, in particular State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007.
<u>1.5 Rural Lands</u>	
Applies when: (a) a relevant planning authority prepares a planning proposal that would affect land within an existing or proposed rural or environment protection zone (including the alteration of any existing rural or environment protection zone boundary) or (b) A planning proposal to which clauses (a) and (b) apply must be consistent with the Rural Planning Principles listed in <i>State Environmental Planning Policy (Rural Lands) 2008</i>.	The site has been identified as state significant farmland. Consideration has been given to the Rural Planning Principles listed in <i>SEPP (Rural Lands) 2008</i> above. The area is very small and surrounded by urban land uses. The planning proposal is justifiably inconsistent as it is of minor significance.

2. Environment and Heritage

2.1 Environment Protection Zones

A Draft LEP shall include provisions that facilitate the protection and conservation of environmentally sensitive areas and shall not reduce the environmental protection standards that apply to the land.

The site is almost totally void of native vegetation and does not comprise any environmentally sensitive areas.

2.3 Heritage Conservation

A planning proposal must contain provisions that facilitate the conservation of items, places, buildings, works, relics, moveable objects or precincts of environmental heritage significance to an area, in relation to the historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic value of the item, area, object or place, identified in a study of the environmental heritage of the area

As previously discussed, no information has been presented to determine the likelihood of any heritage significance and potential impact at the site. Pursuant to Council's Guideline – *Planning Proposal Process and Procedure – Amending a LEP*, an Aboriginal Cultural Heritage 'Due Diligence' Assessment ("an ACHA") must be prepared with a planning proposal. In addition to the bare requirement to prepare an ACHA it was resolved that the landowner is to prepare an assessment report, including consultation with the local Aboriginal Advisory Committee (AAC) and a response to any matters that arise, prior to a request for a planning proposal being made. This information would need to be provided before exhibition of the draft planning proposal.

3. Housing, Infrastructure and Urban Development

3.1 Residential Zones

The objectives of this direction are to encourage a variety and choice of housing types to provide for existing and future housing needs, to make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services, and to minimise the impact of residential development on the environment and resource lands

The proposal will facilitate an increase in housing choice within the locality while having minimal impact on the environment.

3.4 Integrating Land Use and Transport

In summary, this Direction provides that a Draft LEP shall locate zones for urban purposes and include provisions that give effect to or are consistent with the aims, objectives and principles of Improving Transport Choice – Guidelines for Planning and Development (DUAP 2001) and The Right Place for Business and Services – Planning Policy (DUAP 2001). The Direction also provides that a Draft LEP may be consistent with the Direction if the land has been identified in the Strategy prepared by Council and approved by the Director General or, the rezoning is justified by an Environmental Study or the rezoning is in accordance with the relevant regional strategy.

Traffic and access related issues have been considered and concerns raised regarding the proposed access arrangement for the site. Options may exist to overcome these concerns subject to satisfactory compliance with Council requirements.

4. Hazard and Risk

4.4 Planning for Bushfire Protection

Applies when a relevant planning authority prepares a planning proposal that would affect, or is in proximity to land mapped as bushfire prone land.

The site is not affected by any bushfire constraints. Council mapping indicates that the site is not within a bushfire prone area or associated buffer.

In summary, this Direction provides that in the preparation of a Draft LEP a Council shall consult with the Commissioner of the Rural Fire Service and take into account any comments made. In addition, the Draft LEP is required to have regard to Planning for Bushfire Protection, 2001 among other things.

5. Regional Planning

5.1 Implementation of Regional Strategies

Planning proposals must be consistent with a regional strategy released by the Minister for Planning.

The site has not been identified within the town and village growth boundary in the FNCRS. The FNCRS allows for variations where they are minor and don't undermine the strategy. The rezoning of the site is dependent upon the satisfactory compliance of several issues relating to access, stormwater management, water and sewerage services and lot configuration and building envelopes.

It is clearly a minor matter as it is a very small site surrounded by urban development. Its rezoning will permit infill housing in a serviced urban area and resolve a long standing zoning anomaly. The inconsistency is justified.

5.3 Farmland of State and Regional Significance on the NSW Far North Coast

The objectives of this direction are to ensure that the best agricultural land would be available for current and future generations to grow food and fibre; to provide more certainty on the status of the best agricultural land, thereby assisting councils with their local strategic settlement planning; and to reduce land use conflict arising between agricultural use and no-agricultural use of farmland as caused by urban encroachment into farming areas.

The planning proposal is inconsistent in that it would rezone land mapped as state significant farmland for urban purposes. The direction states that a planning proposal may be inconsistent with the terms of the direction if the proposal is consistent with the FNCRS and Section 4 of the Northern Rivers Farmland Protection Project – Final Recommendations. The proposal is consistent with the relevant elements of these strategies and the S117 direction regarding the application.

The agricultural value of the site is considered marginal as the rezoning of Area E for urban purposes has made the identification and retention of the site as an important agricultural or farmland resource, unsustainable.

6. Local Plan Making

6.1 Approval and Referral Requirements

In summary, this Direction provides that a Draft LEP shall minimise the inclusion of provisions that require the concurrence, consultation or referral of development applications to a Minister or Public Authority, not contain these provisions unless Council has obtained approval from the relevant Authority and not identify development as designated development unless certain prerequisites can be met.

The planning proposal would not include provisions that require the concurrence, consultation or referral of development applications to a Minister or public authority.

6.2 Reserving Land for Public Purposes

A planning proposal must not create, alter or reduce existing zonings or reservations of land for public purposes without the approval of the relevant public authority and the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General).

The planning proposal does not create, alter or reduce land reserved for a public purpose.

There has been no request from the Minister or public authority to reserve land for a public purpose concerning this proposal.

6.3 Site Specific Provisions

A Draft LEP that amends another environmental planning instrument in order to allow a particular development proposal shall either allow that land use to be carried out in the zone that the land is situated on or rezone the site to an existing zone already applying in the environmental planning instrument that allows that land use without imposing any development standards or requirements in addition to those already existing or allow that land use on the relevant land without imposing any development standards or requirements in addition to those already contained in the principal planning instrument being amended.

The planning proposal seeks to zone the site for residential purposes under an existing zone already in Tweed LEP 2000 or Draft Tweed LEP 2012.

Section C Environmental, social and economic impact

Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats would be adversely affected as a result of the proposal?

No. The site has been extensively disturbed as part of previous agricultural land use activity and vegetation clearing. No vegetation removal would be required to facilitate future development of the lots forming the site for residential purposes. The Council's vegetation mapping data shows that the site does not contain vegetation of recognised communities and is not shown to have either ecological status or vulnerability.

Therefore it is concluded that no critical habitat or threatened species, populations or ecological communities, or their habitats would be adversely affected as a result of the proposal.

Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

Due to the disturbed nature of the site it is considered unlikely that residential development would result in any adverse impacts beyond those resulting from past activity. Potential site contamination

would need to be addressed prior to any rezoning of the site. Only limited information has been provided by the proponent to address SEPP 55. A Phase 1 assessment would be the minimum requirement to satisfy SEPP 55. This should be undertaken prior to public exhibition of the planning proposal.

How has the planning proposal adequately addressed any social and economic effects?

The planning proposal would potentially have adverse social and economic effects if the shared driveway was not maintained and Terranora Road required upgrading in future years as Area E develops. The limited capacity of water and sewerage services in the area and stormwater concerns could be further exacerbated by the rezoning of the site resulting in Council having to bring forward its upgrade program.

As previously discussed no information has been presented to determine the likelihood of any heritage significance and potential impact at the site. Pursuant to Council's Guideline – *Planning Proposal Process and Procedure – Amending a LEP*, an Aboriginal Cultural Heritage 'Due Diligence' Assessment ("an ACHA") must be prepared with a planning proposal. In addition to the bare requirement to prepare an ACHA it was resolved that the landowner is to prepare an assessment report, including consultation with the local Aboriginal Advisory Committee (AAC) and a response to any matters that arise, prior to a request for a planning proposal being made. This information would need to be provided before progressing any rezoning.

Section D State and Commonwealth interests

Is there adequate public infrastructure for the planning proposal?

The site comprises remnant agricultural land that has been excluded from Area E and subsequent local and regional planning strategies. The parcels have frontage to Terranora Road, but seven of them have no dwelling entitlements. The site has very limited development potential in its current zone, and is currently constrained by limited public infrastructure.

What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

No consultation has been undertaken with any State or Commonwealth authorities as part of this report. This Stage 1 report evaluates the strategic justification for the amendment to Tweed LEP 2000 prior to any Council resolution to forward for a gateway determination.

Part 4 Community consultation

The planning proposal request has not been subject to any community consultation. In accordance with Council's Guideline – *Planning Proposal Process and Procedure – Amending a LEP*, a Council resolution would be sought following evaluation of the strategic justification for the amendment to Tweed LEP 2000.

Further consultation would be undertaken should Council resolve to forward the planning proposal to the gateway for determination.

Summary and conclusions

This Planning Proposal request to rezone Lots 2-8 in DP28597, Terranora Road, Terranora from 1(b1) Agricultural Protection to 2(a) Low Density Residential under Tweed LEP 2000 is conditional supported on the basis that potentially fatal constraints to the site are addressed to the satisfaction of Council, and that should the Gateway Determination recommend proceeding, that negotiation commence with adjoin landowners to facilitate all remnant land zoned 1(b1) Agricultural Protection be included in the final Planning Proposal.

Key aspects to be considered in any post-Gateway determination should include:

- The planning proposal does not include all of the eleven small rural zoned lots with frontage to Terranora Road.
- The site is steep and falls well below the height of Terranora Road making individual access driveways to each lot difficult. Whilst an engineered solution has been offered in the form of a shared driveway, the proposed access arrangement would require significant retaining structures landscaping and ongoing maintenance would be problematic, apart from risks to persons and property should a house be built on the site containing the drainage line.
- The site sits over a major flow path for stormwater from an upstream catchment. Whilst an engineered solution has been presented, it is not consistent with Council's adopted drainage specifications and Subdivision Manual, which aim to preserve overland flow paths and not alter catchments significantly. Such alterations to the flow regime may also have significant downstream impacts by concentrating sheet flow, and further constrain the development of urban land (Area E) to the north. Resolving this issue may involve reassessing the number and shape of Lots 2-8 in DP28597, Terranora Road.
- The site may not be able to be connected to the existing sewerage system as development of the site would place further pressure on downstream pumping stations and associated pressure and gravity mains which are already under stress and may require significant upgrades before further loading can be added.
- Council's water supply is heavily over-demand without any fail safe should the existing generator on the local supply reservoir fail. The addition of this site would exacerbate this situation.

While the planning proposal as presented is only conditionally supported, a range of options appear possible for a more limited but acceptable level of development, provided all of the constraints mentioned above can be addressed to the satisfaction of Council.

Council provides conditional support only to Planning Proposal (PP12/0001) to rezone Lots 2–8 DP 28597 from 1(b1) Agricultural Protection to 2(a) Low Density Residential under Tweed Local Environmental Plan (LEP) 2000 and R2 Low Density Residential under the Standard Instrument LEP, subject to further detailed investigations, preparatory reports and consultation which addresses to the satisfaction of Council the following:

- Access (either single or multiple access points);
- Stormwater management;
- Water and sewerage servicing;
- Lot configuration and building envelopes;
- Land contamination;
- Aboriginal cultural heritage, and
- Inclusion of all remnant fragmented 1(b1) zoned land.

Any revised Planning Proposal would also require the successful negotiation of a VPA between Council and the landowner which addressing the following issues:

- Access;
- Stormwater management;
- Water and sewerage servicing; and
- Lot configuration and building envelopes and building design.

Unless a VPA is negotiated with the landowner as part of the rezoning process, the revised planning proposal could not be supported and the rezoning should not proceed.

ATTACHMENTS

1. Council Report of 21 March 2013
2. Request for Planning Proposal

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