



Planning,
Industry &
Environment

IRF 21/2726

Gateway determination report – PP-2021-4198

To schedule an additional permitted use on Lot 13 DP
1109077 Hulberts Road, Toormina

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Table 1 Reports and plans supporting the proposal

Relevant reports and plans
Planning Proposal – May 2021
Council Resolution and Report
Review of Ecological Values (Idyll Spaces Environmental Consultants, 20 December 2020)

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

LGA	Coffs Harbour
PPA	Coffs Harbour City Council
NAME	Schedule an additional permitted use
NUMBER	PP-2021-4198
LEP TO BE AMENDED	Coffs Harbour Local Environmental Plan 2013
ADDRESS	Hulberts Road, Toormina
DESCRIPTION	Lot 13 DP 1109077
RECEIVED	30/06/2021
FILE NO.	IRF21/2726
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

1.2 Objectives of planning proposal

The planning proposal contains objectives and intended outcomes that adequately explain the intent of the proposal.

The objective of the planning proposal is to permit the storage and hire of shipping containers with development consent on Lot 13 DP 1109077 Hulberts Road, Toormina.

The planning proposal is considered to be the best means of achieving the objectives and intended outcomes.

1.3 Explanation of provisions

The planning proposal seeks to change the Coffs Harbour LEP 2013 as follows:

- amend Schedule 1 Additional permitted uses to permit the storage and hire of shipping containers with development consent on Lot 13 DP 1109077 Hulberts Road, Toormina; and
- amend the Additional Permitted Uses Map (APU_006B) to include Lot 13 DP 1109077 Hulberts Road, Toormina.

The planning proposal contains an explanation of provisions that adequately explains how the objectives of the proposal will be achieved.

Council has indicated that they consider the storage and hire of shipping containers to be defined as a “specialised retail premises” under the Coffs Harbour LEP 2013.

1.4 Site description and surrounding area

The site is located at Hulberts Road, Toormina (Figure 1). Toormina is a suburb located approximately 7 km to the south of the Coffs Harbour central business district and approximately 2 km north-west of Sawtell.

The site is 1.6 hectares and has history of industrial land uses.

The land is mapped as:

- bushfire prone (Figure 2);
- flood affected (Figure 3);
- containing Coastal Wetlands and Proximity Area for Coastal Wetlands under State Environmental Planning Policy (Coastal Management) 2018 (Figure 4);
- containing potential High Environmental Value (HEV) under the North Coast Regional Plan 2036 (Figure 5);
- containing biodiversity values on the Biodiversity Values map (Figure 6); and
- containing primary Koala habitat by the Coffs Harbour City Koala Plan of Management (Figure 7).

Pursuant to the Coffs Harbour LEP 2013 the site:

- is zoned IN1 General Industrial (Figure 8);
- has no minimum lot size; and
- an 11m maximum building height.



Figure 1: Subject site (source: Planning Proposal)

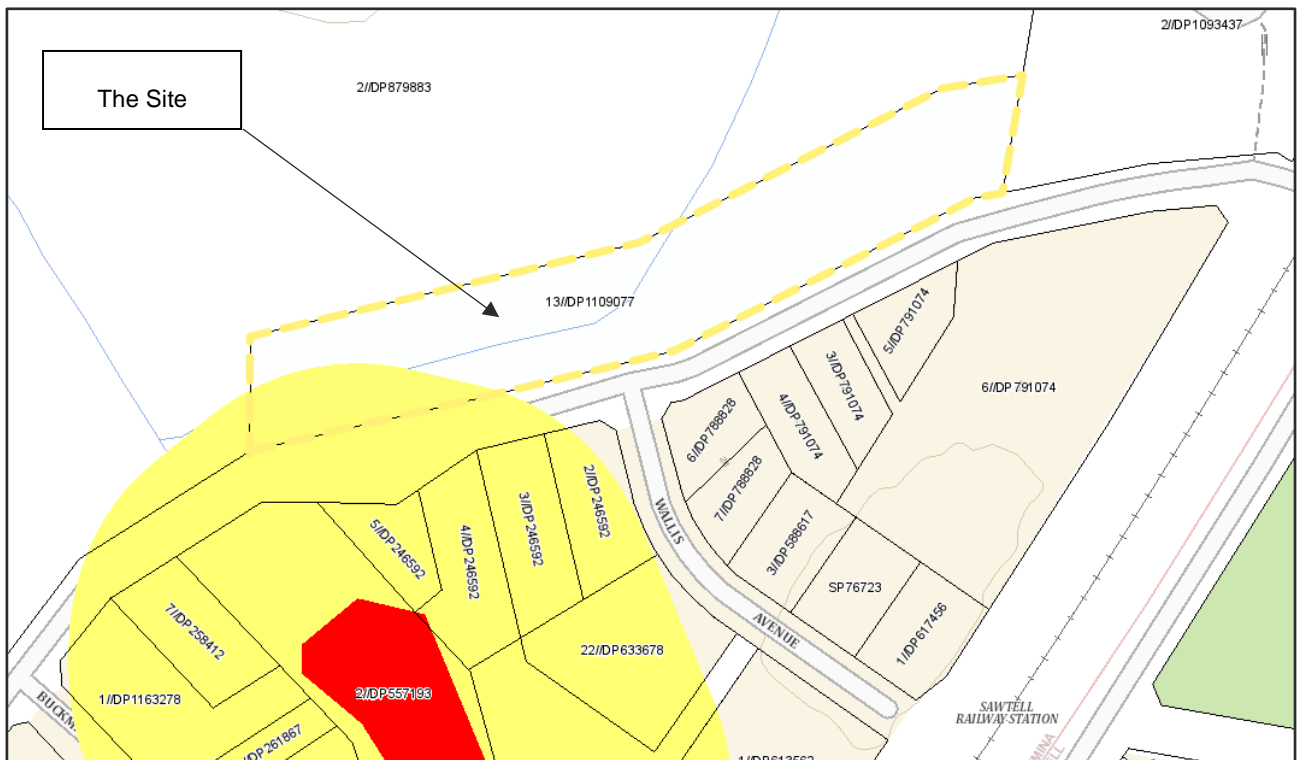


Figure 2: Bushfire prone land (source: Spatial Viewer)

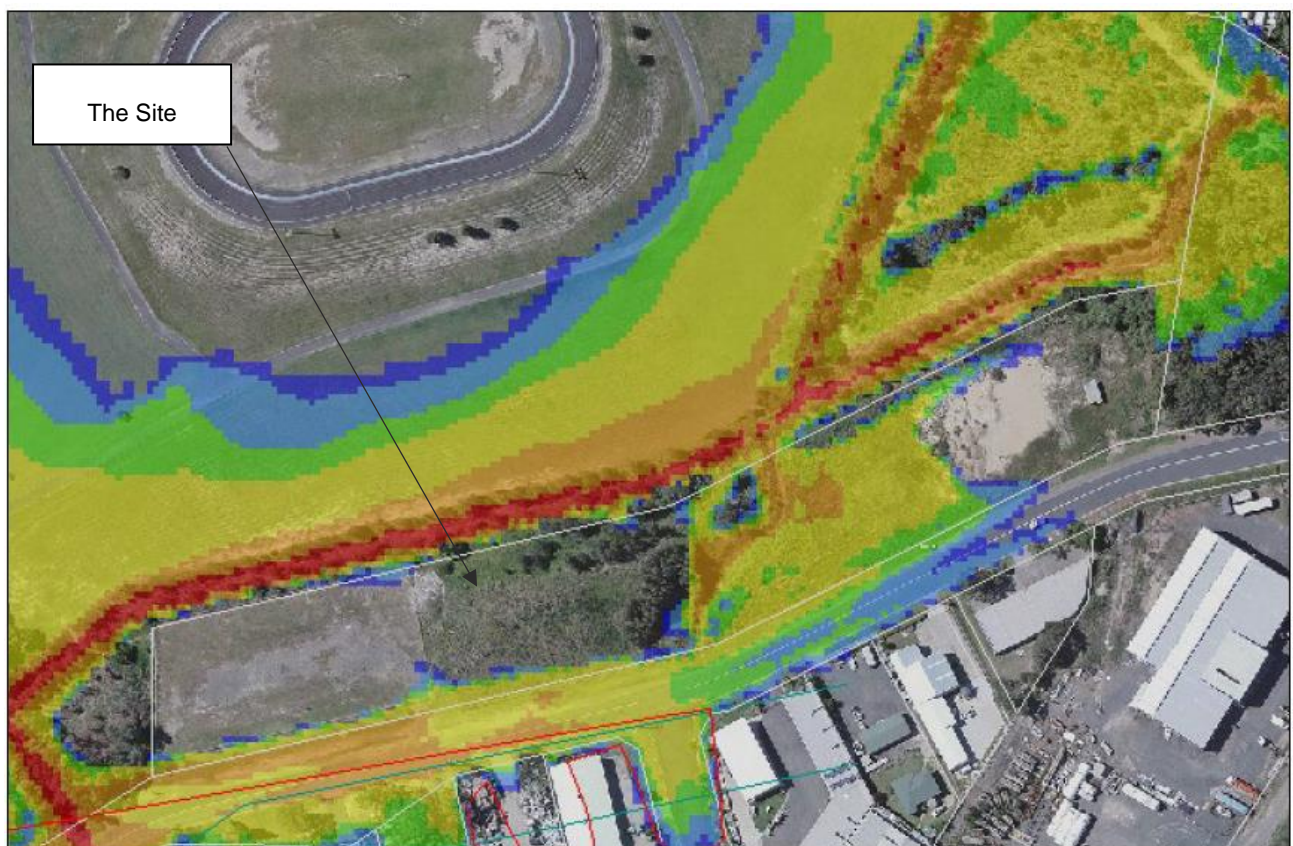


Figure 3 : Preliminary Middle Creek Flood Study 100 year flood depths (source: Planning Proposal)

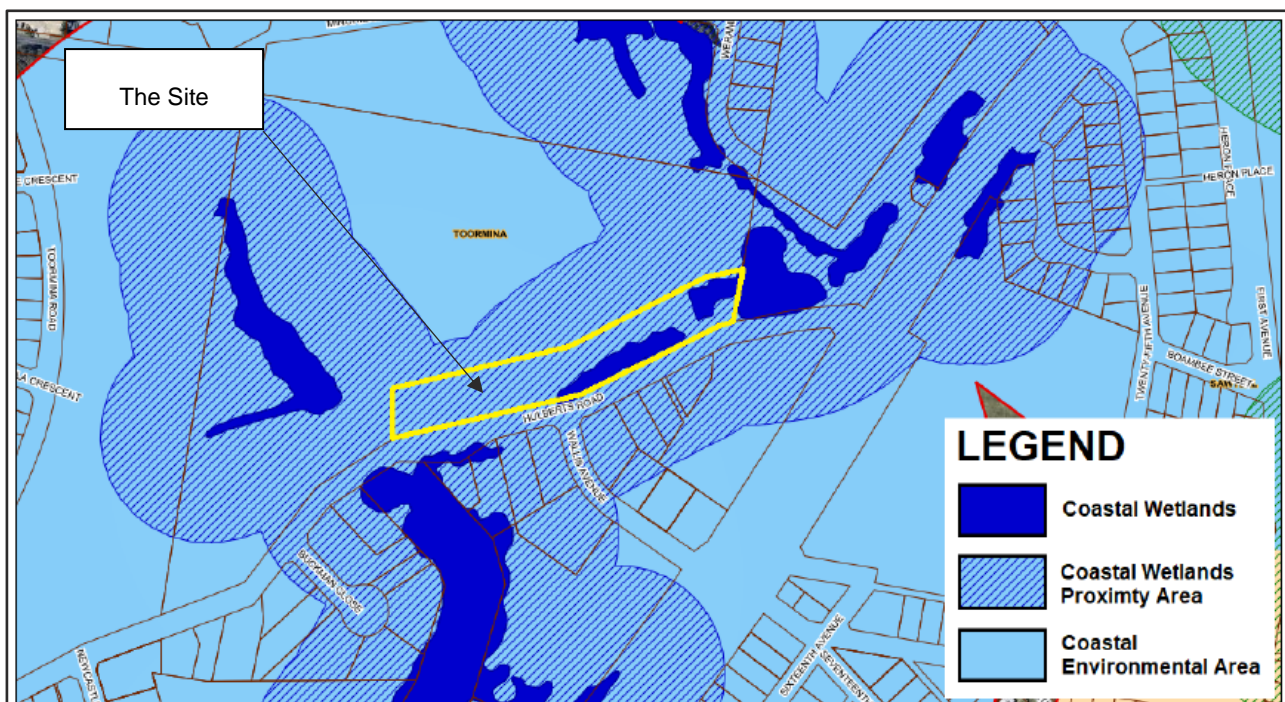


Figure 4 : Extract of SEPP Coastal Management 2018 Map (source: Planning Proposal)

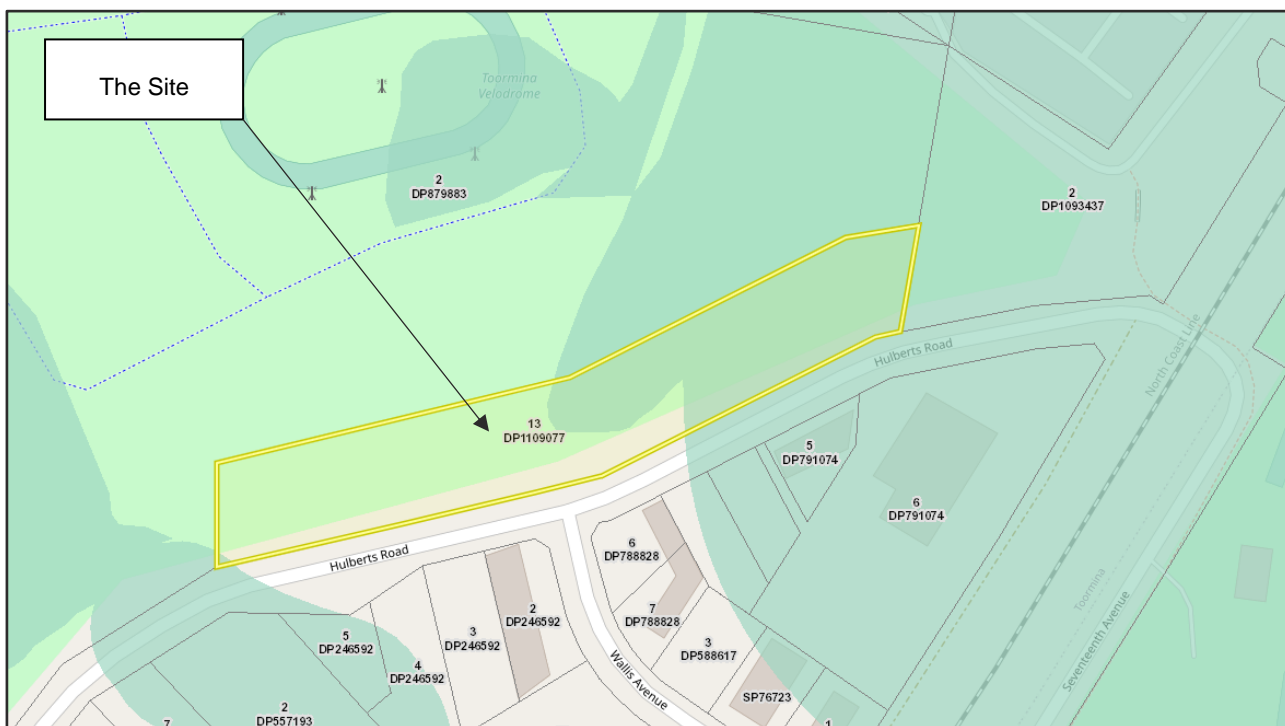


Figure 5: Extract of Potential HEV Map

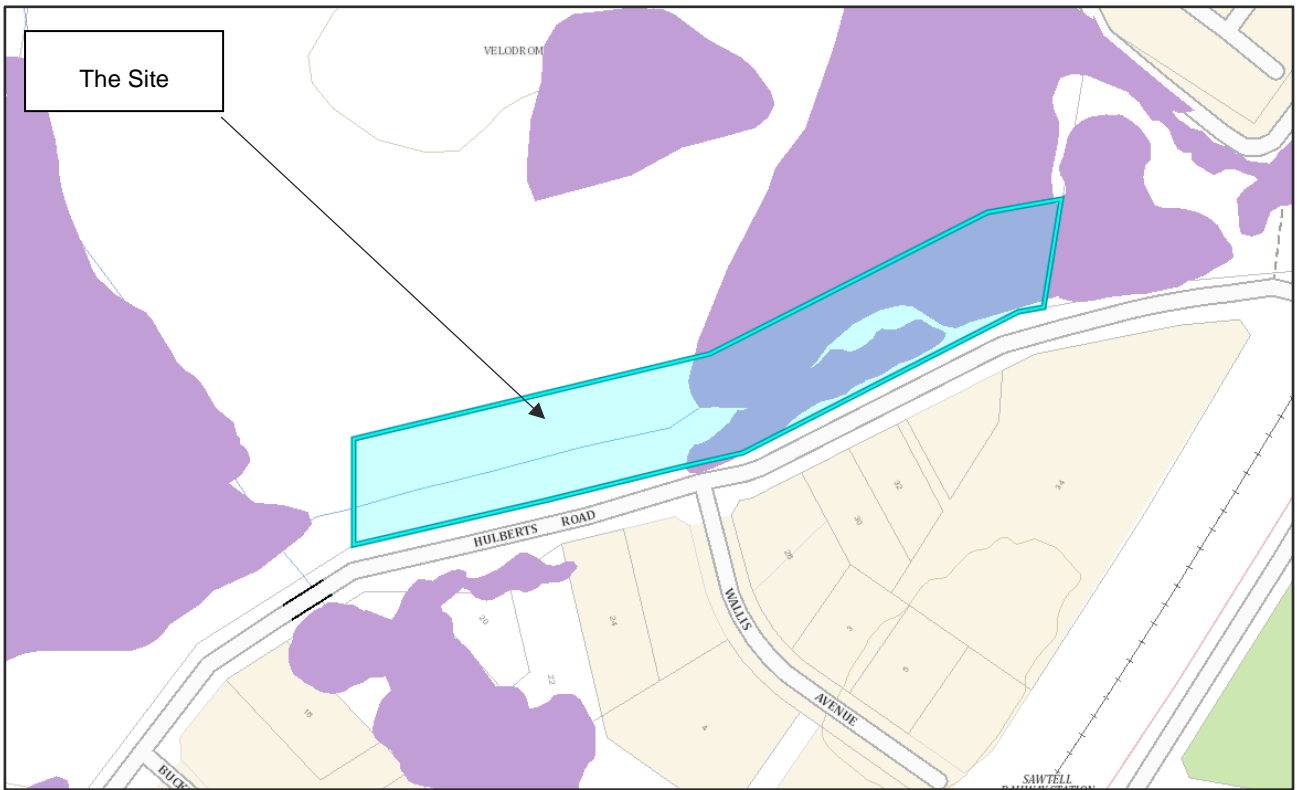


Figure 6: Extract of Biodiversity Values Map



Figure 7: Koala Habitat Map (source: Planning Proposal)

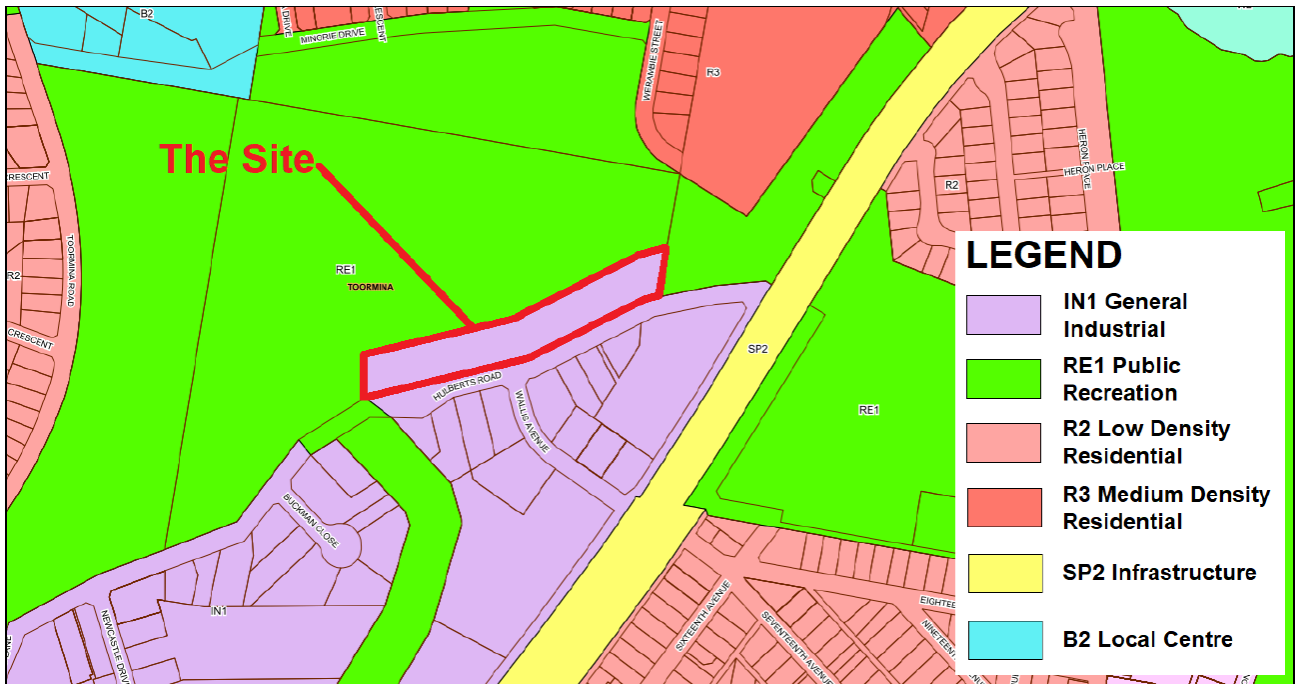


Figure 8: Extract of Current Land Zoning map (source: Planning Proposal)

1.5 Mapping

The planning proposal includes a map that shows the proposed amendment to the Additional Permitted Use Map (APU_006B) (Figure 9). The mapping contained in the planning proposal is adequate for exhibition.

The final map will need to be prepared to the Department's Standard Technical Requirements prior to the plan being finalised

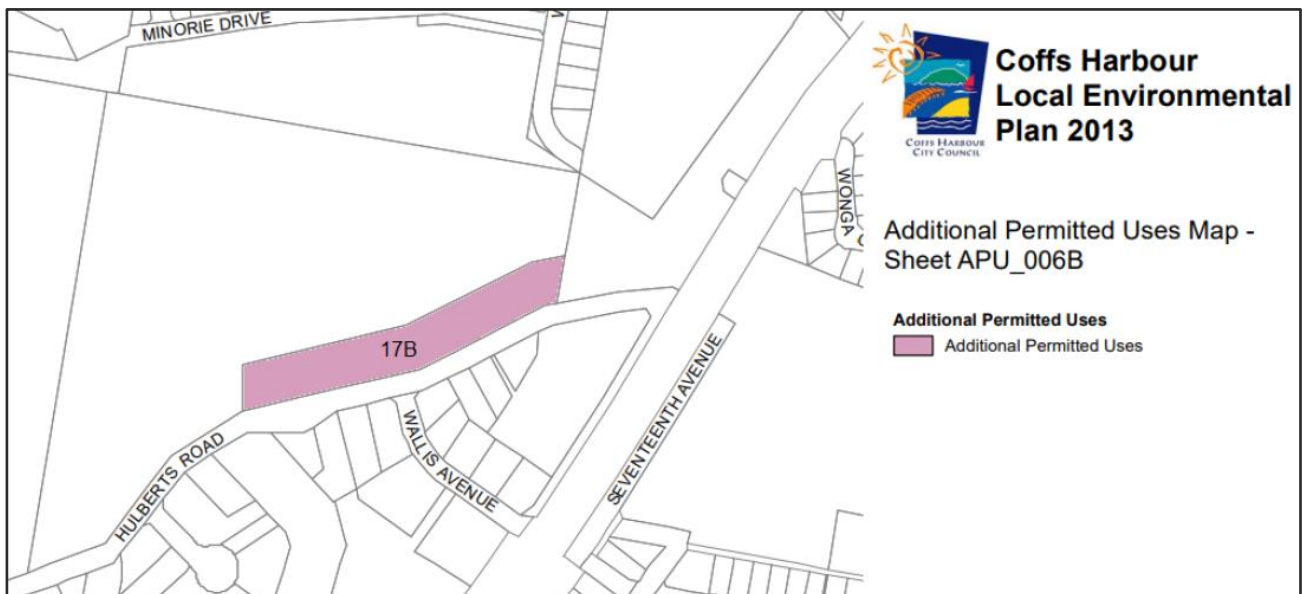


Figure 9: Proposed Additional Permitted Uses (Source: Planning Proposal)

2 Need for the planning proposal

The planning proposal is neither the result of a strategy nor a study. The planning proposal has been prepared in response to the landowner's request to store and hire shipping containers on the land.

3 Strategic assessment

3.1 Regional Plan

The following table provides an assessment of the planning proposal against relevant aspects of the North Coast Regional Plan 2036 (NCRP).

Table 4 Regional Plan assessment

Regional Plan Objectives	Justification
Direction 1 – Deliver environmentally sustainable growth	This Direction aims to manage growth by directing development to mapped urban growth areas in order to better distribute growth and to avoid pressure on the sensitive coastal environment. The proposal is consistent with this Direction, as it is located within the urban growth area boundary.

Direction 2 – Enhance biodiversity, coastal and aquatic habitats, and water catchments

This Direction requires that new development be appropriately located to limit any adverse impact on the region's biodiversity, coastal and aquatic habitats and water catchments. Action 2.1 aims to focus development to areas of least biodiversity sensitivity and implement the 'avoid, minimise, offset' hierarchy to biodiversity including area of high environment value. The land is mapped as comprising potential HEV (Figure 5), biodiversity values (Figure 6), coastal wetlands (Figure 4) and koala habitat (Figure 7).

A Review of Ecological Values (Idyll Spaces Environmental Consultants, 20 December 2020) has been prepared to accompany the proposal. The assessment identifies that remnant forest vegetation in the study area adjoins the site on the eastern, northern and western boundaries.

Onsite vegetation is confined to the western quarter of the site and consists of Exotic grassland and a small area of remnant forest vegetation adjoining the western boundary to be cleared for a 3 metre wide fire trail access. The remainder of the site is clear of vegetation (Figure 10).

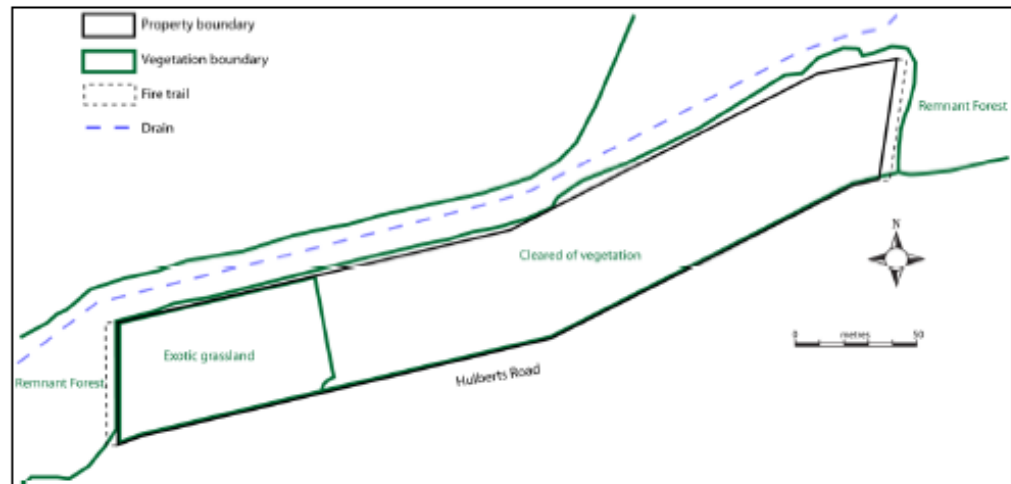


Figure 10: Site Vegetation (source: Review of Ecological Values)

In relation to the coastal wetlands the report concludes the site does not support any coastal wetland defined by the Coastal Management Act 2016 and has not supported vegetation identifiable as coastal wetland since it was cleared in 2011. The ecologist concludes that the current mapping of the site vegetation as coastal wetland is out of date and the proposal is unlikely to impact on the hydrological or floristic characteristics of a coastal wetland.

The conclusions in relation to the koala habitat are that the site does not contain any primary (or other) koala habitat and has not done so since 2007 or earlier. The ecologist also nominates that the current mapping of the site vegetation as koala habitat is based on out dated vegetation mapping.

The planning proposal identifies that the site was cleared and filled in accordance with a development consent issued by Council in 2007. Based on the outcomes of the ecological assessment it is considered unlikely that the proposal will have any detrimental impact on biodiversity or coastal and aquatic habitats. As such, the proposal is not inconsistent with this Direction.

Direction 3 – Manage natural hazards and climate change	<p>This Direction identifies that the North Coast is prone to a range of natural hazards. Action 3.1 aims to reduce the risk from natural hazards by identifying, avoiding and managing areas vulnerable to hazards.</p> <p>The land subject to the planning proposal is bushfire prone. It is recommended as a condition of the Gateway determination, and as a requirement of the section 9.1 Direction 4.4 Planning for Bushfire Protection, that consultation be undertaken with the NSW Rural Fire Service to confirm the suitability of the proposal and whether measures must be implemented to manage the hazard.</p> <p>Council is currently completing a new Flood Study for Middle Creek, which is due for completion in 2021. The preliminary results from the Middle Creek flood study show this land would be impacted by 1 in 100 year flooding, with the 100-year level being around 5 m AHD. However, Council has advised that flooding is not considered to be a constraint to development of the land as it has been previously filled with development consent to 5.4m AHD which is above the 100-year flood level. As such, the proposal is not inconsistent with this Direction. However, it is recommended that consultation is undertaken with the Division of Biodiversity and Conservation in relation to flooding.</p>
Direction 7 – Coordinate the growth of regional cities	<p>This Direction identifies that Coffs Harbour is a popular place to live and work and that an Action Plan will be prepared to coordinate investment and infrastructure to underpin the delivery of homes and new jobs. The proposal is not inconsistent with the Coffs Harbour Regional City Action Plan (RCAP) which is discussed in section 3.2 of this report.</p>
Direction 18 – Respect and protect the North Coast's Aboriginal heritage	<p>This Direction nominates that Aboriginal heritage includes places and objects that are of significant to Aboriginal people. Council has indicated that the land does not contain any known or predictive Aboriginal Cultural Heritage and an search of the Aboriginal Heritage Information System has not revealed any sites on or near the subject land. As such, the proposal is not inconsistent with this Direction.</p>
Local Government Narrative	<p>The proposal is consistent with the relevant Local Government Narratives Harbour which are to manage and support growth in Coffs harbour and protect environmental assets.</p>

3.2 Local

The proposal states that it is consistent with the following local plans and endorsed strategies. It is also consistent with the strategic direction and objectives, as stated in the table below:

Table 6 Local strategic planning assessment

Local Strategies	Justification
Local Strategic Planning Statement	<p>Coffs Harbour City Council adopted its Local Strategic Planning Statement (LSPS) on 25 June 2020. The proposal is not inconsistent with the LSPS.</p> <p>The Planning Priorities and Actions contained within the Local Strategic Planning Statement (LSPS) that relate to this proposal, include:</p> <ul style="list-style-type: none"> • 9. Deliver a Local Centres placemaking approach to revitalise local centres; and • A9.5 Deliver on strategic directions for local employment and business centres outlined in the Local Growth Management Strategy, as funding allows.
Coffs Harbour Regional City Action Plan	<p>The Coffs Harbour Regional City Action Plan (RCAP) provides the structure to manage and shape the city's growth over the next 20 years. The proposal is not considered to be inconsistent with the RCAP.</p> <p>The RCAP responds to the expected population growth with a coordinated approach to align infrastructure delivery with sustainable housing in ways that make best use of available land and access to services.</p> <p>Objective 14: Optimise employment land delivery across the city is relevant to the proposal. The relevant Actions include:</p> <ul style="list-style-type: none"> • 14.1 Characterise employment areas in local plans to reflect their strategic employment role. • 14.2 Enhance employment land stock by restricting encroachment of noncompatible uses and identifying infrastructure needs including suitable freight and transport access. • 14.3 Coordinate employment land delivery to secure sufficient employment land supply. • 14.4 Maximise the competitive and natural advantages of employment precincts <p>The proposal also supports Objective 1 Make the city centre Coffs Harbour's Cultural live-work-play hub. The proposed land use which is defined by Council to be "specialised retail premises" and is currently permissible in Zones B2 Local Centre, B3 Commercial Core, B4 Mixed Use and B5 Business Development, is not considered by Council to be suitable for the commercial zones due to its visual representation and associated loading/unloading requirements and truck movements.</p> <p>It is noted that the planning proposal does not address the RCAP. Prior to community and agency consultation, it is recommended that Council amend Section B of the proposal to include a discussion.</p>

My Coffs Community Strategic Plan 2030	<p>Council's Community Strategic Plan (CSP) is based on four key themes: Community Wellbeing; Community Prosperity; A Place for Community; and Sustainable Community Leadership. The planning proposal is generally consistent with the following relevant objectives and strategies within the CSP, being:</p> <ul style="list-style-type: none"> • B1.1: We champion business, events, innovation and technology to stimulate economic growth, investment and local jobs; and • B1.2: We attract people to work, live and visit in the Coffs Harbour local government area.
Coffs Harbour Local Growth Management Strategy – Chapter 8 Employment Lands	<p>The Coffs Harbour Local Growth Management Strategy – Chapter 8 Employment Lands (LGMS) was conditionally endorsed by the Department on 27 October 2020. The proposal is not considered to be inconsistent with the LGMS Chapter 8.</p> <p>The LGMS Chapter 8 provides a strategic framework to facilitate and accommodate future employment growth within the Coffs Harbour LGA. The objectives of Chapter 8 are:</p> <ul style="list-style-type: none"> • to revisit and update the established strategies and directions in the Industrial and Business Chapters of Council's existing Local Growth Management Strategy; • to provide direction and actions to guide future land use decision-making and facilitate renewal of employment land to attract industry or business investment; and • to identify potential future locations for employment land development, beyond existing zoned land, subject to demand and supply analysis. <p>The Hulberts Road industrial area is identified within LGMS Chapter 8 as an employment precinct. Within this precinct, light industrial uses make up 53% of the overall floorspace summary. These uses include storage facilities, small manufacturing operations, transport depots, semi commercial/retail, automotive and marine uses.</p> <p>The LGMS Chapter 8 states that the Hulberts Road precinct has the potential to transition to Zone IN2 Light Industrial due to its proximity to residential land and the dominance of lower-impact uses that would align with a light industrial zone. The Strategy notes that land uses within Zone IN2 Light Industrial should not have adverse amenity impacts on surrounding land uses.</p> <p>The proposed use of the subject land for the storage and hire of shipping containers is considered by Council to be a low-impact land use that is compatible with the intentions of the LGMS Chapter 8 for this employment precinct.</p> <p>Council also advise that the subject land is situated such that visual impacts from the proposed use on surrounding residential land would be minimal due to the lands topography and surrounding open space/vegetation. Further, amenity impacts associated with other 'dirtier' industries, such as dust, noise and odour would not be likely to be associated with the proposed land use.</p> <p>Finally, Council consider that an industrial zone is more appropriate for the storage and hire of shipping containers as this use is considered to be industrial in nature, particularly due to its visual representation, associated loading/unloading requirements and truck movements.</p>

3.3 Section 9.1 Ministerial Directions

The planning proposal's consistency with relevant section 9.1 Directions is discussed below:

Table 7 9.1 Ministerial Direction assessment

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
Direction 2.1 Environment Protection Zones	No - justifiably inconsistent	<p>This Direction is relevant to the proposal because it does not facilitate the protection and conservation of mapped environmentally sensitive areas. As discussed in section 3.1, the land is mapped as containing potential HEV (Figure 5), biodiversity values (Figure 6), coastal wetlands (Figure 4) and koala habitat (Figure 7).</p> <p>The inconsistency is considered to be justified by the Review of Ecological Values (Idyll Spaces Environmental Consultants, 20 December 2020) prepared to support the planning proposal, which concludes that there is no vegetation that constitutes coastal wetland or koala habitat remaining on the land following lawful clearing and filling.</p>
Direction 2.2 Coastal Protection	No – justifiably inconsistent	<p>The proposal is inconsistent with this Direction as it includes land mapped in the State Environmental Planning Policy (Coastal Management) 2018 and does not include provisions which give effect to the objectives of the Coastal Management Act 2016, the NSW Coastal Management Manual, the NSW Coastal Design Guidelines 2003 and any coastal management program or coastal zone management plan that applies to the land. The inconsistency is considered to be justified by the Review of Ecological Values (Idyll Spaces Environmental Consultants, 20 December 2020) prepared to support the proposal, which concludes that any previous coastal wetlands have been lawfully cleared and filled. As such, the proposal is unlikely to impact on the hydrological or floristic characteristics of a coastal wetland.</p>
Direction 4.3 Flood Prone Land	No – justifiably inconsistent	<p>This Direction is relevant to the planning proposal as it alters a provision that affects flood prone land. The inconsistency is considered to be minor as Council has indicated that the land has been filled to above the flood planning level identified in the preliminary Flood Study for Middle Creek and should development be proposed on the land, the Coffs Harbour LEP 2013 contains provisions to ensure that flooding will be considered and addressed at the development application stage. However, it is recommended that consultation is undertaken with the Division of Biodiversity and Conservation to confirm the suitability of the proposal.</p>

Direction 4.4 Planning for Bushfire Protection	No – inconsistent	This Direction is relevant as the planning proposal applies to land that will affect land mapped as bushfire prone. The Direction provides that the Council must consult with the Commissioner of the NSW Rural Fire Service (RFS) following receipt of the Gateway determination and prior to undertaking community consultation. Until this consultation has occurred the inconsistency with the Direction is unresolved.
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3.4 State environmental planning policies (SEPPs)

The relevant SEPPs are discussed in the table below.

Table 8 Assessment of planning proposal against relevant SEPPs

SEPPs	Requirement	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
SEPP (Coastal Management) 2018	The SEPP implements the objectives of the Coastal Management Act 2016 from a land use planning perspective, by specifying how development proposals are to be assessed if they fall within the coastal zone.	Yes	As discussed in section 3.1 of this report, the Review of Ecological Values (Idyll Spaces Environmental Consultants, 20 December 2020) has been prepared to accompany the proposal. In relation to the coastal wetlands the report concludes the site does not support any coastal wetlands defined by the Coastal Management Act 2016 and has not supported vegetation identifiable as coastal wetland since it was cleared in 2011. However, as the land is mapped as coastal wetlands, the provisions of the SEPP will be a consideration at the development application stage.

SEPP (Koala Habitat Protection) 2021	The SEPP aims to help reverse the decline of koala populations and provides a process for councils to strategically manage koala habitat through the development of koala plans of management.	Yes	<p>As discussed in section 3.1, the Review of Ecological Values (Idyll Spaces Environmental Consultants, 20 December 2020) has been prepared to accompany the proposal. The conclusions in relation to the koala habitat are that the site does not contain any primary (or other) koala habitat.</p> <p>Primary Koala habitat is mapped as occurring on the eastern half of the site by the Coffs Harbour City Koala Plan of Management 1999 (Figure 7). However, following preparation of the CKPoM, the land was cleared and filled, with development consent issued by Council in 2007.</p> <p>Council also note that a substantial area of mapped Primary Koala habitat on Council managed lands adjoining the subject land have also been cleared.</p>
SEPP No 55 Remediation of Land	The SEPP contains a framework for the management of contaminated land in NSW	Yes	<p>Council advise that their Contaminated Land register does not identify any past activities likely to have caused contamination. Further, the land has been previously filled with development consent. Council conclude that there is no further investigation required in relation to the potential for contamination.</p> <p>The SEPP will be a consideration at the development application stage.</p>

4 Site-specific assessment

4.1 Environmental, Social and economic

The environmental considerations relating to potential HEV, biodiversity values, coastal wetlands, koala habitat, flooding and bushfire have been discussed in sections 3.1, 3.3 and 3.4 of this report.

In relation to contamination, Council conclude that there is no further investigation required in relation to the potential for contamination. Further, based on the chronological history contained within the planning proposal, the land has not been used for a purpose referred to in Table 1 of the contaminated land planning guidelines, nor does the proposal facilitate additional residential, educational, recreational, childcare or hospital land uses. As such the proposal is not inconsistent with Section 9.1 Direction 2.6 Remediation of Contaminated Land.

The establishment of a land use with the potential for visual impact outside the commercial centres of the LGA is considered to be a positive social outcome. The economic benefits of the proposal relate to the potential for a small financial contribution to the LGA in terms of jobs and growth.

5 Consultation

5.1 Community

Council proposes a community consultation period of 28 days. The exhibition period proposed is considered appropriate, and forms the conditions of the Gateway determination.

5.2 Agencies

It is recommended the following agencies be consulted on the planning proposal and given 21 days to comment:

- NSW Rural Fire Service
- Division of Biodiversity and Conservation

6 Timeframe

Council proposes a 9 month time frame to complete the LEP. It is considered that a 9 month timeframe is appropriate, and it will ensure that the LEP is completed in line with the Department's commitment to reduce processing times.

A condition to the above effect is recommended in the Gateway determination.

7 Local plan-making authority

Council has advised that it would like to exercise its functions as a Local Plan-Making authority.

The Department recommends that Council be authorised to be the local plan-making authority for this proposal as it is generally consistent or justifiably inconsistent with the State, regional and local planning framework and deals only with matters of local significance.

It is considered appropriate that Council be provided authorisation to act as the local plan-making authority.

8 Assessment summary

It is considered that the planning proposal has merit to proceed to Gateway for the following reasons:

- it is not inconsistent with the North Coast Regional Plan or Council's Local Strategic Planning Statement;
- it will increase diversity and economic opportunity on the land whilst maintaining the objectives of the zone; and
- it will not comprise the vision for the locality under the Coffs Harbour Growth Management Strategy Chapter 8 – Employment Lands.

Based on the assessment outlined in this report, the proposal must be updated before consultation to:

1. Prior to community and agency consultation, Council is to amend Section B of the proposal to include discussion on the Coffs Harbour Regional City Action Plan 2036.

9 Recommendation

It is recommended the delegate of the Secretary:

- **agree** that any inconsistencies with section 9.1 Directions 2.1 Environment Protection Zones, 2.2 Coastal Protection and 4.3 Flood Prone Land are justified; and
- **note** that the consistency with section 9.1 Direction 4.4 Planning for Bushfire Protection is unresolved.

It is recommended the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. Prior to community and agency consultation, Council is to amend Section B of the proposal to include discussion on the Coffs Harbour Regional City Action Plan 2036.
2. Consultation is required with the following public authorities:
 - NSW Rural Fire Service
 - Division of Biodiversity and Conservation
3. The planning proposal should be made available for community consultation for a minimum of 28 days.
4. The timeframe for completing the LEP is to be 9 months from the date of the Gateway determination.
5. Given the nature of the proposal, Council should be authorised to be the local plan-making authority.



27/07/2021

(Signature)

(Date)

Lucy Walker

Specialist Planning Officer, Northern Region



5/8/2021

(Signature)

(Date)

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