



Agile Planning  
Department of Planning, Housing and Infrastructure  
Locked Bag 5022  
PARRAMATTA NSW 2124

Attention: Ms Shruthi Sriram

Dear Ms Sriram

**RE: Planning proposal – 225 Terranora Road, Banora Point – PP-2021-5615**

Thank you for your email dated 30 January 2024 about the planning proposal to rezone land at 225 Terranora Road, Banora Point, seeking comments from the Biodiversity, Conservation and Science Group (BCS) of the NSW Department of Climate Change, Energy, the Environment and Water. I appreciate the opportunity to provide input.

BCS has reviewed the following documents:

- Updated Terrestrial Flora and Fauna Assessment (TFFA) for 3-lot residential subdivision at Lot 16 DP856265, 225 Terranora Road, Terranora, prepared by Planit Consulting Pty Ltd and dated 23 March 2023
- Flora and Fauna Assessment for proposed rezoning at 225 Terranora Road, Banora Point, prepared by Aspect North and dated January 2004
- 225 Terranora Road, Banora Point Draft Environmental Management Plan prepared by Planit Consulting Pty Ltd and dated 19 January 2023
- Planning Proposal – Gateway Determination for 225 Terranora Road, Banora Point, Lot 16 DP856265, prepared by Planit Consulting Pty Ltd and dated May 2023.

Based on our review, further work is required on the planning proposal including updating the flora and fauna studies with current biodiversity information about the planning area, applying conservation zones to areas of confirmed high environmental value land, and addressing the 30m ecological setbacks from threatened ecological communities required by the Tweed Development Control Plan 2008 Section A19 Biodiversity and Habitat Management.

Our detailed comments are provided in **Attachment 1** to this letter.

Given the planning proposal does not include conservation zones for areas of high environmental value land containing threatened ecological communities, BCS objects to the planning proposal in its current form as it does not accord with the North Coast Regional Plan 2041.

In summary, BCS recommends that:

1. The scope of the planning proposal and the planning area be expanded to consider appropriate land use zones over the entirety of Lot 16 DP856265.

2. The flora and fauna assessment for the planning proposal be updated with contemporary biodiversity information on the biodiversity values of the planning area to map areas of high environmental value land.
3. Based on the information currently provided in the planning proposal:
  - a. the areas mapped as Vegetation Community 4 and identified as a threatened ecological community (i.e. an area of high environmental value) in the Updated Terrestrial Flora and Fauna Assessment prepared by Planit Pty Ltd and dated 23 March 2024 be rezoned to C2 Environmental Conservation.
  - b. the areas mapped as Vegetation Communities 2 and 3 in the Updated Terrestrial Flora and Fauna Assessment prepared by Planit Pty Ltd and dated 23 March 2024 be identified as a threatened ecological community (i.e. an area of high environmental value) and rezoned to C2 Environmental Conservation.
4. The planning proposal be revised to
  - a. apply the 30m ecological setback from listed threatened ecological communities, as required by the Tweed Development Control Plan 2008 Section A19 Biodiversity and Habitat Management
  - b. demonstrate how the planning proposal will ensure future development can avoid these ecological setback areas.

Once our recommendations above have been addressed, BCS requests a further opportunity to review the planning proposal with a view to reconsidering our objection.

If you have any further questions about this issue, please contact Mr Gene Mason, Senior Conservation Planning Officer North East, Biodiversity, Conservation and Science Group, on 8289 6315 or at [gene.mason@environment.nsw.gov.au](mailto:gene.mason@environment.nsw.gov.au).

Yours sincerely



**GABRIELLE PIETRINI**  
**Director North East**  
**Biodiversity, Conservation and Science**

18 March 2024

Enclosure: Attachment 1: Detailed DCCEEW BCS Comments – Planning proposal - 225 Terranora Road, Banora Point

## **Attachment 1: Detailed DCCEEWS BCS Comments – Planning proposal - 225 Terranora Road, Banora Point**

The Biodiversity, Conservation and Science Group (BCS) of the NSW Department of Climate Change, Energy, the Environment and Water has reviewed the:

- Updated Terrestrial Flora and Fauna Assessment (TFFA) for 3-lot residential subdivision at Lot 16 DP856265, 225 Terranora Road, Terranora, prepared by Planit Consulting Pty Ltd and dated 23 March 2023
- Flora and Fauna Assessment for proposed rezoning at 225 Terranora Road, Banora Point, prepared by Aspect North and dated January 2004
- 225 Terranora Road, Banora Point Draft Environmental Management Plan prepared by Planit Consulting Pty Ltd and dated 19 January 2023
- Planning Proposal – Gateway Determination for 225 Terranora Road, Banora Point, Lot 16 DP856265, prepared by Planit Consulting Pty Ltd and dated May 2023.

We understand the planning proposal seeks to rezone approximately 4.18 ha of land currently zoned 7(d) Environmental Protection (Scenic/Escarpment) and 1(c) Rural Living under the Tweed Local Environmental Plan (LEP) 2000 to R5 Large Lot Residential under the Tweed LEP 2014.

BCS provides the following comments on the planning proposal and associated documents.

### Planning area

The planning proposal seeks to rezone part of the planning area to R5, and to retain the existing zoning over the remainder of the planning area. The planning proposal indicates that Lot 16 DP856265 contains high environmental value (HEV) land outside of the proposed R5 area, but conservation zones are not proposed to be applied to this land because the Tweed Shire Council has yet to introduce the C2 Environmental Conservation and C3 Environmental Management zones to the Tweed LEP 2014.

We understand the C2 and C3 zones were introduced to the Tweed LEP 2014 in 2023.

Planning proposals offer opportunities to consider appropriate land uses for the entire planning area. BCS expects the planning area to encompass the entirety of Lot 16 DP856265.

### *BCS Recommendation*

1. The scope of the planning proposal and the planning area be expanded to consider appropriate land use zones over the entirety of Lot 16 DP856265.

### Currency of flora and fauna information

The TFFA is based on biodiversity data gathered for the 2004 Flora and Fauna Assessment prepared by Aspect North and another study undertaken in 2015. The data in the 2004 and 2015 studies is out of date as flora and fauna surveys more than five years old are unlikely to provide valid and current information on the biodiversity values of a planning area.

### *BCS Recommendation*

2. The flora and fauna assessment for the planning proposal be updated with contemporary biodiversity information on the biodiversity values of the planning area.

### Threatened ecological communities

Based on those out-of-date studies, the TFFA concludes that areas mapped as Vegetation Community (VC) 4 are representative of the Lowland Rainforest in the NSW North Coast and Sydney Basin Bioregions threatened ecological community (TEC). TECs constitute areas of HEV as per the criteria in the North Coast Regional Plan 2041 (NCRP). The TFFA does not consider any of the other mapped VCs to be representative of the lowland rainforest TEC and references the flora species lists contained in the 2004 Flora and Fauna Assessment by Aspect North as justification that the vegetation in these areas is degraded.

The species list for VC2 in the 2004 Flora and Fauna Assessment indicates moderate native plant diversity in all strata, including 3 tree/palm species, 17 midstorey species and 5 groundcover/vine species that are listed in the NSW Scientific Committee's final determination for the lowland rainforest TEC.

The species list for VC3 in the 2004 Flora and Fauna Assessment indicates moderate native plant diversity in all strata, including 4 tree/palm species, 9 midstorey species and 3 groundcover/vine species that are listed in the NSW Scientific Committee's final determination for the lowland rainforest TEC.

As per the NSW Threatened Species Scientific Committee (TSSC) 2020, *Guideline for interpreting listing criteria for species, populations and ecological communities under the NSW Biodiversity Conservation Act 2016*, unpublished report version 2.1, Section 1.6 of the *Biodiversity Conservation Act 2016* defines an ecological community as 'an assemblage of species occupying a particular area'.

This definition embodies three requirements:

- i) the constituents of a community must be species,
- ii) the species need to be brought together into an assemblage, and
- iii) the assemblage of species must occupy a particular area.

VC2 and VC3 meet all these requirements with respect to the Lowland Rainforest in the NSW North Coast and Sydney Basin Bioregions TEC, and so they constitute areas of HEV.

In accordance with the NCRP, planning proposals are to apply appropriate mechanisms such as conservation zones and Biodiversity Stewardship Agreements to protect HEV land within a planning area. BCS expects a C2 zone to be applied to a confirmed TEC.

### *BCS Recommendation*

3. The areas mapped as Vegetation Community 4 and identified as a threatened ecological community (i.e. an area of high environmental value) in the Updated Terrestrial Flora and Fauna Assessment prepared by Planit Pty Ltd and dated 23 March 2024 be rezoned to C2 Environmental Conservation.
4. The areas mapped as Vegetation Communities 2 and 3 in the Updated Terrestrial Flora and Fauna Assessment prepared by Planit Pty Ltd and dated 23 March 2024 be identified as a threatened ecological community (i.e., an area of high environmental value) and rezoned to C2 Environmental Conservation.

### Ecological setbacks

Figure 4 of the TFFA shows the boundary of the proposed R5 area avoids overlapping with a 20m setback from areas identified as the lowland rainforest TEC. We understand the Tweed Shire Council Development Control Plan Section A19 Biodiversity and Habitat Management requires an ecological setback of 30m from TECs. This would also apply to the additional TEC areas discussed

above. Future development to be enabled by the planning proposal will need to avoid the 30m setback to all these areas.

*BCS Recommendation*

5. The planning proposal be revised to:
  - a. apply the 30m ecological setback from listed threatened ecological communities, as required by the Tweed Development Control Plan 2008 Section A19 Biodiversity and Habitat Management
  - b. demonstrate how the planning proposal will ensure future development can avoid these ecological setback areas.

BCS Objection

The planning proposal does not include conservation zones for areas of high environmental value land containing threatened ecological communities and so it does not accord with the North Coast Regional Plan 2041. Hence, BCS objects to the planning proposal in its current form.



Agile Planning  
Department of Planning, Housing and Infrastructure  
Locked Bag 5022  
PARRAMATTA NSW 2124

Attention: Mr Tim Coorey

Dear Mr Coorey,

**RE: Planning Proposal – 225 Terranora Road, Banora Point – PP-2021-5615**

Thank you for your email dated 24 April 2024 about the planning proposal to rezone land at 225 Terranora Road, Banora Point, seeking further comments from the Biodiversity, Conservation and Science Group (BCS) of the Department of Climate Change, Energy, the Environment and Water. I appreciate the opportunity to provide input.

BCS previously objected to the planning proposal in our submission dated 18 March 2024 because the planning proposal does not include conservation zones for areas of high environmental value (HEV) land containing threatened ecological communities (TECs) and therefore it does not accord with the North Coast Regional Plan 2041 (NCRP). We also raised an issue regarding the currency of biodiversity information for the planning area and recommended the planning proposal address the 30m ecological setbacks from TECs required by the Tweed Development Control Plan 2008 Section A19 Biodiversity and Habitat Management.

We understand the proponent has provided a response to our submission. We have reviewed the proponent's response and advise that it does not resolve all the issues raised in our submission.

Currency of flora and fauna information

In our submission, we noted the Updated Terrestrial Flora and Fauna Assessment (TFFA) prepared by Planit Consulting Pty Ltd dated 23 March 2023 is based on out-of-date biodiversity data gathered from surveys undertaken in 2004 and 2015, and therefore the data are unlikely to provide valid and current information on the biodiversity values of the planning area.

The proponent's response states additional ecological assessment was undertaken in 2023. The TFFA refers to a site inspection that was undertaken in 2023 to refine the mapping of vegetation communities. However, Section 3.1 of the TFFA states detailed flora analysis was undertaken in 2004 and ground-truthed in 2015. The species lists in Attachment 2 Appendix B that form the basis of the vegetation community descriptions in Section 3.1 originate from the 2004 study. This is important because the data gathered for the 2004 study appear to have informed the conclusion in the TFFA that only vegetation community 4 is representative of the Lowland Rainforest in the NSW North Coast and Sydney Basin Bioregions TEC.

Likewise, the fauna assessment detailed in Section 4 of the TFFA is based on surveys that were undertaken in 2004 and 2015. No further fauna surveys are described in the TFFA.

As per our previous letter, BCS recommends the TFFA be updated with contemporary biodiversity data to identify and map areas of HEV land.

### Conservation zones

In our submission we recommended the scope of the planning proposal and the planning area be expanded to consider appropriate land use zones over the entirety of Lot 16 DP856265, including by applying the C2 Environmental Conservation zone to areas of HEV land outside of the proposed R5 area.

The proponent's response considers no conservation zones should be applied to areas outside of the proposed R5 Large Lot Residential footprint because, in summary:

- the proponent, Tweed Shire Council staff and the Northern Regional Planning Panel have raised no concern with the approach taken in the current planning proposal.
- the subject site is not included in the council's 'Stage 1' conservation zone mapping.
- the land is already zoned for conservation under the Tweed Local Environmental Plan (LEP) 2000, being subject to zone 7(d) Environmental Protection (Scenic/Escarpment).

BCS understands the Tweed Shire Council introduced the C2 Environmental Conservation and C3 Environmental Management zones to the Tweed Local Environmental Plan (LEP) 2014 in 2023. We have discussed the planning proposal with the council, which advised it supports conservation zones being applied in individual planning proposals, including this planning proposal. Hence, BCS considers it is inappropriate to rezone part of Lot 16 DP856265 under the Tweed LEP 2014 and retain the outdated zoning under the Tweed LEP 2000 across the remainder of the parcel, when Council has made C zones available in the Tweed LEP 2014 with the expectation they will be applied as part of individual planning proposals.

As discussed in our previous submission, based on the out-of-date biodiversity data in the TFFA, vegetation communities 2, 3 and 4 are representative of the lowland rainforest TEC. BCS notes there is a small area of community 3 in the proposed R5 zone that comprises *Macaranga* (*Macaranga tanarius*) regrowth, which differs from the composition of community 2 outside the proposed R5 zone where the community comprises lowland rainforest TEC. This area of *Macaranga* regrowth is unlikely to accord with the lowland rainforest TEC and hence does not comprise HEV land.

In accordance with the NCRP, planning proposals are to apply appropriate mechanisms such as conservation zones and Biodiversity Stewardship Agreements to protect HEV land within a planning area. BCS expects the C2 zone to be applied to the confirmed TEC in the planning area, which is located outside the proposed R5 zone.

### Ecological setbacks

In our submission, we recommended the planning proposal demonstrate how future development can comply with the 30m setback from TECs required by the Tweed Shire Council Development Control Plan (DCP) Section A19 Biodiversity and Habitat Management.

The proponent's response considers it would be an error to apply the 30m setback at the rezoning stage, and that DCP controls will need to be addressed as part of future development applications.

We consider addressing the 30m setback at the rezoning stage would simplify the assessment of future development applications, improve understanding of the conservation values of the land, and moderate the expectations of future landowners regarding the availability of land for development.

Notwithstanding, we agree that DCP controls can be addressed at the development application stage.

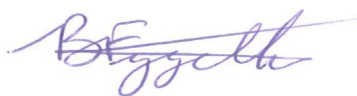
### BCS Objection

As per our previous submission, the planning proposal does not include conservation zones for areas of high environmental value land containing threatened ecological communities, which are located outside the proposed R5 zone, and so it does not accord with the North Coast Regional Plan 2041. Hence, BCS objects to the planning proposal in its current form.

BCS would reconsider our objection if the planning proposal was amended to apply the C2 zone to HEV land outside the proposed R5 zone.

If you have any further questions about this issue, please contact Mr Gene Mason, Senior Conservation Planning Officer North East, Biodiversity, Conservation and Science Group, on 8289 6315 or at [gene.mason@environment.nsw.gov.au](mailto:gene.mason@environment.nsw.gov.au).

Yours sincerely,



**BEN FITZGIBBON**  
**Acting Director North East**  
**Biodiversity, Conservation and Science**

8 May 2024



## **Tweed Byron Local Aboriginal Land Council Submission – 13 February 2024**

I refer to the above referral and, in reviewing the documents in the planning portal (<https://www.planningportal.nsw.gov.au/ppr/under-exhibition/225-terranora-road>), I note two relevant considerations:

1. The "Aboriginal Cultural Heritage Assessment Report AHIMS" document consists of a basic search using a 200m buffer. We always use a 1km buffer. Hence the first documents shows zero sites in the vicinity, whereas the second shows seven sites.
2. The "rezoning Review" contains a paragraph headed "Cultural Heritage" which states "Tweed Shire Council has mapped the Terranora Ridgeline as an area of predictive significance under its Aboriginal Cultural Heritage Management Plan. As the site has been substantially disturbed through its use as a quarry, the land proposed to be rezoned is unlikely to contain items of Aboriginal cultural heritage. The previous Gateway determination issued for the site required an Aboriginal Cultural Heritage assessment to occur prior to exhibition of the planning proposal. If supported, a similar condition on the Gateway determination would be recommended."

This is correct, however there are two 'predictive' polygons that, in part, overlap the property - Terranora Ridgeline *and* River Road. There is also a 'known' polygon that overlaps a part of the property, which encompasses four AHIMS registered sites - not on the property, but obviously very nearby.

Whilst past disturbance is a regulatory 'qualifier' for due diligence assessments of potential for harm to Aboriginal cultural heritage (ACH), we generally consider it to be a very minor consideration (as evidenced, for example, by the fact that four registered sites exist in the immediate vicinity of the property under consideration). All of the Tweed Valley, and indeed all of the arable and mineable parts of Australia, have been substantially disturbed. There are innumerable places of Aboriginal cultural significance where very few, or no, items of Aboriginal cultural heritage remain.

Obviously rezoning of the property will not, in itself, harm ACH but the future development of the rezoned property, which is the ultimate purpose of the rezoning, potentially will.

Therefore, the Cultural Heritage Unit of the Tweed Byron Local Aboriginal Land Council strongly agrees, and requests, that the Gateway determination for the site require an Aboriginal Cultural Heritage assessment to occur prior to exhibition of the planning proposal.

Department of Planning, Housing & Infrastructure  
(Parramatta)  
Locked Bag 5022,  
PARRAMATTA NSW 2124  
Australia

Your reference: PP-2021-5615  
Our reference: SPI20240131000010

**ATTENTION:** Shruthi Sriram

Date: Wednesday 6 March 2024

Dear Sir/Madam,

**Strategic Planning Instrument**  
**Rezoning – Exhibition**  
Notice of Exhibition

I refer to your correspondence dated 30/01/2024 inviting the NSW Rural Fire Service (NSW RFS) to comment on the above Strategic Planning document.

The NSW RFS has considered the information submitted and provides the following comments.

The subject land is located within the Far North Coast - Tweed locality, with established public road system, reticulated water supply, street hydrants and serviced by State based Emergency responders (F+R, Ambulance, RFS, SES, etc).

The strategic study for the site reflects this establish urban form and the future residential development that the planning proposal enables. Further it is accepted that the state and local governments are forecasting future services to facilitate urban growth in the locality including improved regional roads( and water supply.

A bushfire hazard exists to the south of the site. Any future Planning Proposal must adopt the bushfire threat identified in the bushfire report and apply recommended bushfire resilience measures (APZ, construction, access, water, services).

For any queries regarding this correspondence, please contact Alan Bawden on 1300 NSW RFS.

Yours sincerely,

Timothy Carroll  
**Manager Planning & Environment Services**  
**Built & Natural Environment**

**Postal address**

NSW Rural Fire Service  
Locked Bag 17  
GRANVILLE NSW 2142

**Street address**

NSW Rural Fire Service  
4 Murray Rose Ave  
SYDNEY OLYMPIC PARK NSW 2127

**T** (02) 8741 5555  
**F** (02) 8741 5550  
[www.rfs.nsw.gov.au](http://www.rfs.nsw.gov.au)