



IRF23/619

## Gateway determination report – PP-2023-459

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Height and zoning amendments to align Tweed LEP  
2014 with Kingscliff Locality Plan and DCP provisions

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# Acknowledgment of Country

The Department of Planning and Environment acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

## Contents

<b>1</b>	<b>Planning proposal.....</b>	<b>1</b>
1.1	Overview.....	1
1.2	Objectives of planning proposal .....	1
1.3	Explanation of provisions .....	1
1.4	Site description and surrounding area.....	2
1.5	Mapping.....	9
1.6	Background .....	9
<b>2</b>	<b>Need for the planning proposal .....</b>	<b>9</b>
<b>3</b>	<b>Strategic assessment .....</b>	<b>10</b>
3.1	Regional Plan .....	10
3.2	Local.....	13
3.3	Section 9.1 Ministerial Directions .....	14
3.4	State environmental planning policies (SEPPs) .....	14
<b>4</b>	<b>Site-specific assessment .....</b>	<b>14</b>
4.1	Environmental.....	14
4.2	Social and economic.....	15
4.3	Infrastructure .....	15
<b>5</b>	<b>Consultation.....</b>	<b>15</b>
5.1	Community .....	15
5.2	Agencies.....	15
<b>6</b>	<b>Timeframe .....</b>	<b>15</b>
<b>7</b>	<b>Local plan-making authority .....</b>	<b>15</b>
<b>8</b>	<b>Assessment summary .....</b>	<b>16</b>
<b>9</b>	<b>Recommendation.....</b>	<b>16</b>

**Table 1 Reports and plans supporting the proposal**

Relevant reports and plans
Tweed Shire Council Planning Proposal, v1 for Gateway review, Feb 2023
Report to Planning Committee and Council resolution, Mar 2023
Tweed Shire Council Kingscliff Locality Plan, July 2020
Planning Proposal Application Form
Planning Proposal Submission Form

# 1 Planning proposal

## 1.1 Overview

**Table 2 Planning proposal details**

<b>LGA</b>	<b>Tweed Shire</b>
<b>PPA</b>	<b>Tweed Shire Council</b>
<b>NAME</b>	<b>Height and zoning amendments to align Tweed LEP 2014 with Kingscliff Locality Plan and DCP provisions</b>
<b>NUMBER</b>	<b>PP-2023-459</b>
<b>LEP TO BE AMENDED</b>	<b>Tweed LEP 2014</b>
<b>ADDRESS</b>	<b>Various properties in Kingscliff</b>
<b>DESCRIPTION</b>	<b>As above</b>
<b>RECEIVED</b>	<b>14/03/2023</b>
<b>FILE NO.</b>	<b>IRF23/619</b>
<b>POLITICAL DONATIONS</b>	<b>There are no donations or gifts to disclose and a political donation disclosure is not required</b>
<b>LOBBYIST CODE OF CONDUCT</b>	<b>There have been no meetings or communications with registered lobbyists with respect to this proposal</b>

## 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 proposal is to amend building height controls and land zones for certain properties in Kingscliff to align with Council's Kingscliff Locality Plan (2020) and Development Control Plan (DCP) provisions.

## 1.3 Explanation of provisions

The planning proposal seeks to amend the Tweed Local Environmental Plan (LEP) 2014 height and zoning maps as follows:

1. reduce the maximum building height for properties in the Kingscliff Town Centre Precinct fronting Marine Parade from 13.6m to 11m;
2. reduce the maximum building height to 12.2m in R3 Medium Density zones within the North Kingscliff and Beach Front Precincts (currently 13.6m), Kingscliff Hill Precinct (currently 13.6m) and Seaside Precinct (currently 13m);
3. reduce the maximum building height for certain land in the SALT Precinct from 13.6m to 9m;

4. rezone certain land within the North Kingscliff Precinct from R2 Low Density Residential to R3 Medium Density Residential; and
5. rezone certain land within the SALT Precinct from R1 General Residential to R2 Low Density Residential.

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

## 1.4 Site description and surrounding area

The proposal relates to certain land in seven (7) precincts of Kingscliff's urban area. Figure 1 shows the locality of the land. Specific locations are identified in the planning proposal and additional aerial, zone and height of buildings (HOB) map extracts are provided in this report for context.

The precincts comprise:

- Town Centre (**Figure 3**)
- North Kingscliff and Beach Front (**Figure 4**)
- Kingscliff Hill (**Figure 5**)
- Seaside (**Figure 6**)
- North Kingscliff (**Figure 7**)
- SALT (**Figures 8 & 9**).



**Figure 1: Locality plan (source: Planning Proposal & Tweed Community Strategy Plan 2022-2032)**



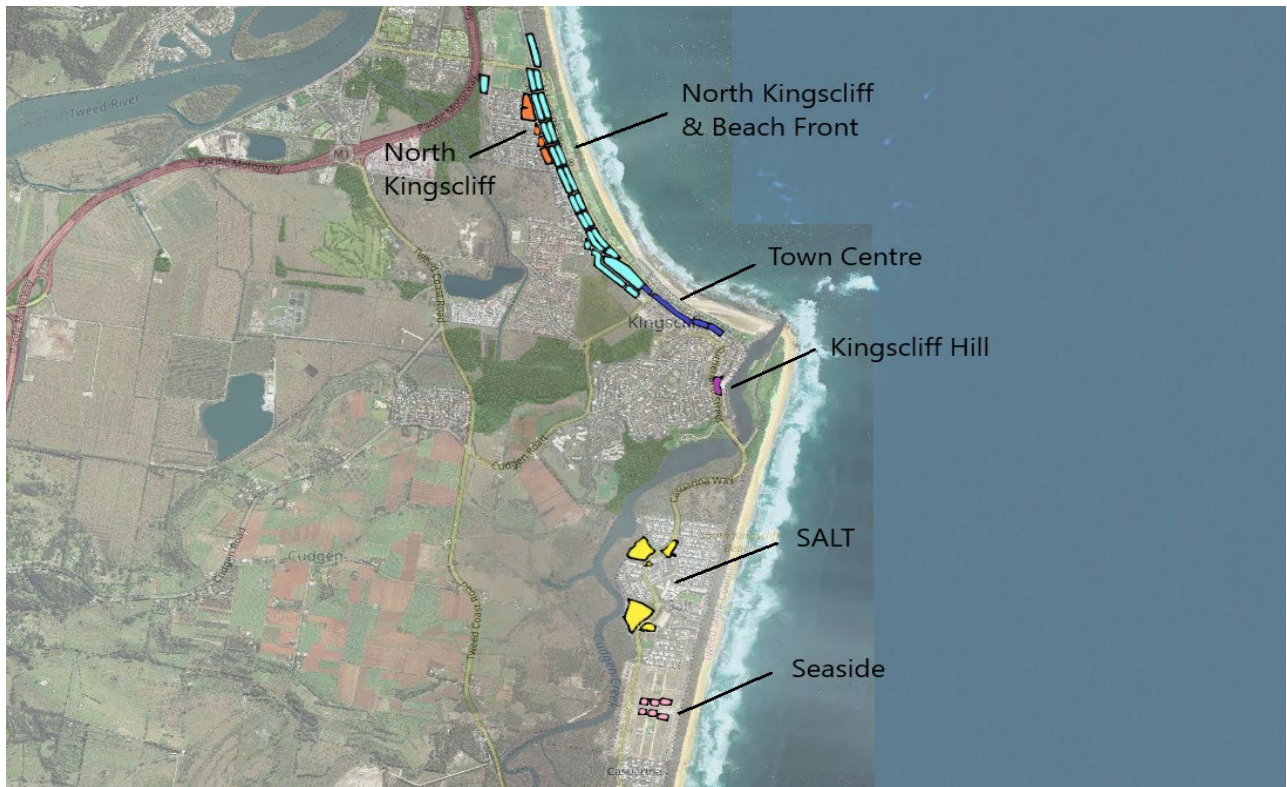
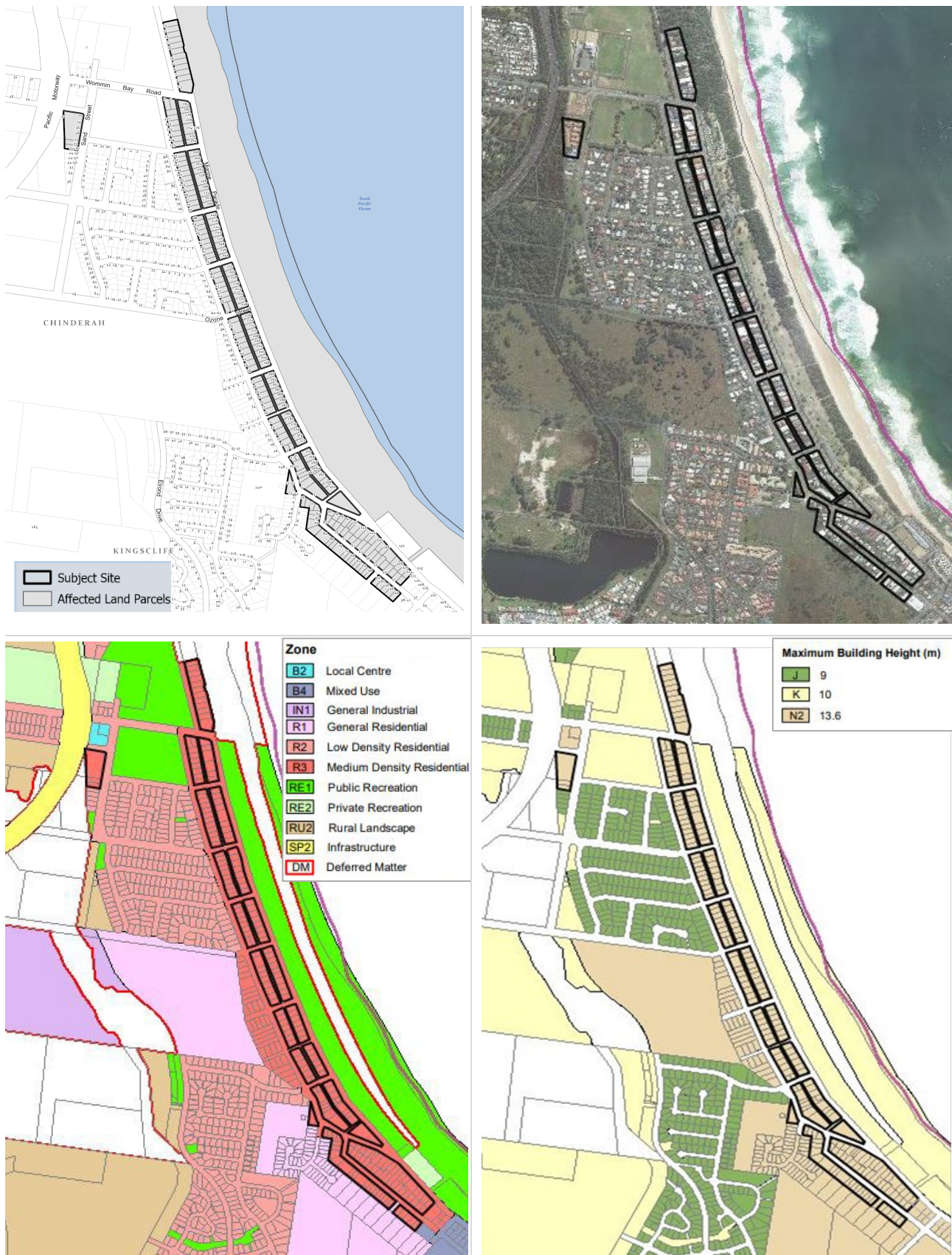


Figure 2: Subject sites within precincts



Figure 3: Town Centre precinct - proposed reduced HOB to 11m – subject site, aerial, land zone, current HOB (source: Planning Proposal & DPE North Coast Spatial Viewer)





**Figure 4: North Kingscliff and Beach Front precincts - proposed reduced HOB to 12.2m - subject site, aerial, land zone, current HOB (source: Planning Proposal & DPE North Coast Spatial Viewer)**



**Figure 5: Kingscliff Hill precinct - proposed reduced HOB to 12.2m - subject site, aerial, land zone, current HOB (source: Planning Proposal & DPE North Coast Spatial Viewer)**



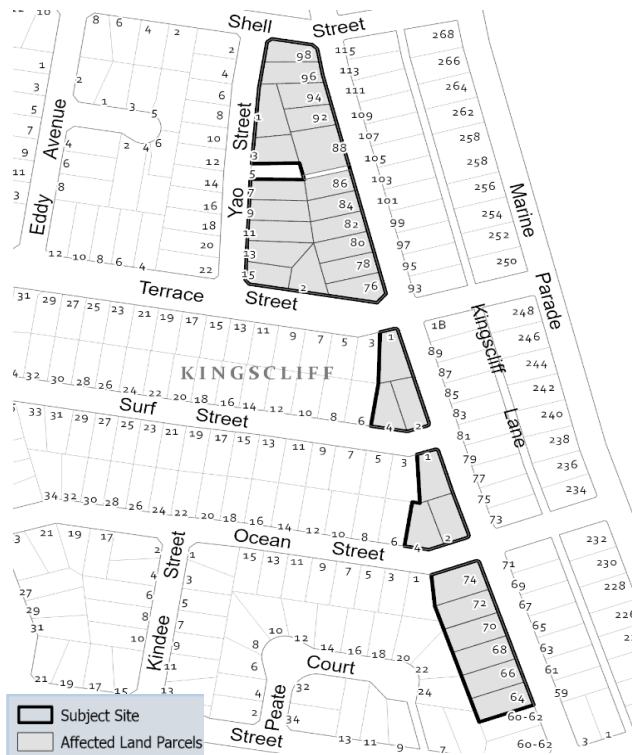


**Figure 6: Seaside precinct - proposed reduced HOB to 12.2m - subject site, aerial, land zone, current HOB (source: Planning Proposal & DPE North Coast Spatial Viewer)**

Note: On 22 March 2023 Council advised that the Seaside Precinct map inadvertently included Zone B4 Mixed Use land on the northern side of Ocean Avenue, which was a mapping error.

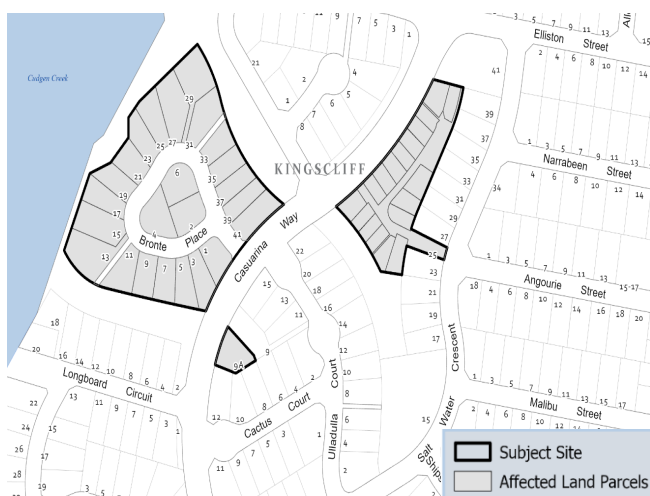
The Zone B4 land has been excluded from the locality, land zone and current HOB maps above. Should the proposal proceed, the Seaside Precinct map will be amended prior to public exhibition.





**Figure 7: North Kingscliff precinct - proposed rezoning from R2 to R3 - subject site, aerial, current land zone, HOB (source: Planning Proposal & DPE North Coast Spatial Viewer)**







## 1.5 Mapping

The planning proposal only includes locality and precinct mapping and does not include LEP mapping which shows the proposed changes to Tweed LEP 2014. Current and proposed height and land zone map extracts should be included to adequately reflect the proposed amendments prior to community consultation.

## 1.6 Background

The former Tweed LEP 2000 contained storey-based height controls, however, during the Standard Instrument LEP conversion process, the Department required these controls to be converted to HOB (Height of Building) controls in RL (reduced level) measurements.

In response, Council moved the storey-based controls into its DCP, with generous mapped HOB controls in the LEP to enable pitched roof form and differing ceiling levels within developments to deliver positive urban design outcomes. Several applications were however then received with skillion roofs and minimal ceiling heights, resulting in an extra storey being achieved within the RL controls but not complying with the DCP storey-based limits.

In 2018, Council submitted a planning proposal which, amongst other matters, proposed changes to HOB controls for certain land in Kingscliff to rectify this issue. At the time, Council had prepared a draft Locality Plan to guide development and employment in Kingscliff, including setting building heights, however the plan had not been placed on public exhibition.

The draft Kingscliff Locality Plan recommended a reduced building height of 11m for Marine Parade, Town Centre Precinct; all mixed-use and business zones be limited to 13.6m; and all other areas of medium-density residential zones be limited to 12.2m. These heights were intended to achieve equivalent outcomes to those permitted under the former storey based LEP controls. As no information had been provided by Council to justify why this aspect of the draft Locality Plan should be implemented prior to community consultation, this part of the planning proposal was not supported.

In June 2020, Council adopted the Kingscliff Locality Plan and development control plan (DCP) provisions which included regularising Council's historic planning and the community aspirations for a three-storey height limit in Kingscliff. The Locality Plan was not submitted to the Department for endorsement.

## 2 Need for the planning proposal

The planning proposal is not a result of a Department approved local housing strategy, strategic study, or report. It has been prepared to align the Tweed LEP 2014 with Council's adopted Kingscliff Locality Plan and DCP provisions (2020) to reflect community aspirations for a three-storey height limit in Kingscliff and to correct a translation issue that occurred in the preparation of the Tweed LEP 2014 that has inadvertently resulted in a four-storey height limit.

Council has advised that this proposal is the first stage in implementing the broader Locality Plan, with further proposals for the future once updated flood modelling is available.

The planning proposal is needed to amend the HOB and land zone maps applying to the subject land and is the best means of achieving the intended outcomes.

## 3 Strategic assessment

### 3.1 Regional Plan

The North Coast Regional Plan (NCRP) 2041 provides the strategic direction for land use and development across the North Coast region with a focus on liveability, resilience, economic growth, environmental protection, and planning for sustainable communities.

The planning proposal is considered to be inconsistent with the objectives of the Regional Plan discussed below.

**Table 3 Regional Plan assessment**

Regional Plan Objectives	Justification
Objective 1: Provide well located homes to meet demand	<p>This objective encourages delivery of a mix of well-located homes to support the region's future growth. Based on the Department's 2022 population and housing projections, it is expected that the North Coast region will require a minimum of 41,300 extra homes over the next 20 years to meet demand. It is projected that 13,290 of these dwellings will be needed with the Tweed LGA. The Tweed Local Narrative within the NCRP 2041 that was prepared in consultation with Council also identifies Kingscliff for urban renewal, and the need for increased housing density in centres such as Kingscliff, along with encouraging a range of housing products.</p> <p>Strategy 1.2 of the NCRP 2041 requires that council's local plans facilitate a range of housing options in well located areas. Strategy 1.4 requires that in preparing local housing strategies, councils prioritise new infill development to assist in meeting the region's overall 40% multi-dwelling/small lot housing target to 2036.</p> <p>Tweed Council is in the early stages of preparing a Growth Management and Housing Strategy which is expected to be completed in 2024. Once adopted by Council and endorsed by the Department, the strategy will represent an agreed approach to providing for projected housing and employment land needs in the Tweed LGA over the next 20 years.</p> <p>While the general concept of aligning LEP height limits and land zones with locality plans and DCPs is broadly supported, the proposal is considered to be inconsistent with this objective and the local narrative by reducing building heights and downzoning land resulting in a loss of housing and development potential, particularly small housing types located close to services and facilities.</p> <p>To confirm compliance with this objective of the Regional Plan, the Department wrote to Council requesting additional information to clarify the net change in development potential as a result of the height and zone changes; what options exist to make adequate provision for any loss of housing in the locality; and how the 40% small lot medium density target in the Regional Plan will still be met to 2036.</p> <p>Council's response advised that any impact or loss of housing will be minimal in context of the broader KLP which identifies new residential greenfield to cater for demand over the next 30 years. Extra housing to be provided in the area includes the nearby Kings Forest master planned community for 11,000 residents, and potential rezoning of 80ha in Kingscliff yielding 1740 additional lots (3755 new residents).</p>

Council acknowledged the need to deliver the regional plan's 40% density target and clarified that a Growth Management and Housing Strategy (GMHS) is currently being prepared that will determine where greater densities can be achieved across the LGA, including Kingscliff. It was advised that pending completion of the GMHS analysis in Aug/Sep 2023, Council's position remains to deliver medium density and small lot housing primarily in new greenfield release areas.

No clear advice to quantify the net change in housing potential has been provided, making it difficult to understand or quantify the impact on housing opportunities in Kingscliff. It is also noted that the rezoning and release to the market of the future potential supply being relied upon by Council to justify the loss of any housing potential, is landowner/developer dependent and the timeline is unknown.

Council's justification and reliance on release areas in the KLF also appears to contradict the planning proposal, which has deferred areas of future density due to flooding concerns and also notes much of Kingscliff, with exception of Kingscliff Hill, is inundated by a probable maximum flood (PMF). The Tweed community has been vocal about back zoning the undeveloped land and permitting no further rezonings after the 2022 floods.

Apart from a small area along Cudgen/Alton Road, all land identified for greenfield release in the KLP is significantly inundated by the 1% AEP flood and impacted by the PMF (**Figures 10 & 11**). Substantial fill would be required to enable development.

The planning proposal notes that Council is in the process of updating its flood modelling, mapping and policy, which is expected to be completed mid to late 2023, to provide a better understanding of capacity for increased dwelling densities in the future. In the absence of this work, no certainty exists that the projected yields can be realised.

The Department's 2022 population projections indicate that over the 20 years (2021-2041) the population of the Kingscliff–Fingal Head statistical area, which predominately comprises Kingscliff, will grow by 7,591 (47%) – or around 1.96% a year. Noting this anticipated demand, the adoption of reduced height controls and zone changes for Kingscliff at this time, is considered premature prior to completion of Council's Growth Management and Housing Strategy and flood planning work to provide greater certainty on future yields and the impact of any housing losses associated with the current proposal.

Objective 2:  
Provide for more  
affordable and low  
cost housing

This objective encourages opportunities to increase housing supply to provide for greater housing diversity, choice, and affordability to help meet the needs of an ageing population and to support liveable homes that are responsive to changing needs and household size.

The proposal seeks to regulate the built environment through development standards and zone changes that are considered to suit the unique character of Kingscliff in response to community concerns. The planning proposal is likely to result in reducing housing supply in the area, other than a potentially small increase in the area of North Kingscliff proposed to be zoned for R3.



	<p>To confirm compliance with this objective of the Regional Plan, additional information was requested from Council to clarify how the proposal will provide for greater housing diversity to meet changing household needs. In response, Council advised that the proposed North Kingscliff R3 zoning (24,000sqm) is expected to expand low rise medium density housing opportunities and deliver housing diversity in the short-term. Retaining a 9m height limit for the R3 Zone North Kingscliff area is however considered likely to limit any uplift potential for increased diversity. Any change is considered likely therefore to be negligible.</p>
<p>Objective 11: Support cities and centres and coordinate the supply of well-located employment land</p>	<p>This objective relates to the employment goals of the Regional Plan and in particular, encourages retention and protection of employment land through flexible planning and development controls that will enable communities to respond to new opportunities and technologies.</p> <p>Strategy 11.1 requires that local council plans support and reinforce cities and centres as a focal point for economic growth and activity. Strategy 11.2 requires that land use planning maintain and enhance the function of established commercial centres.</p> <p>The proposed reduction in height from 13.6m to 11m for Zone B4 Mixed Use land in the town centre will reduce total floor space for retail and commercial uses, which makes the proposal inconsistent with this objective.</p> <p>To confirm compliance with this objective of the Regional Plan, additional information was sought from Council to demonstrate that reduced floor space in the B4 zone will not adversely affect the viability of the town centre.</p> <p>In response, Council advised that reducing heights across the town centre is expected to have a negligible impact as the KLP includes strategies for a significant westward expansion of the town centre within the existing 13.6m height limit.</p> <p>The land identified for the town centre expansion, west along Turnock Street, includes existing developed and greenfield land which is significantly inundated by the 1% AEP flood and impacted by the PMF. As discussed under objective 1, in the absence of updated flood modelling, mapping, and policy work (expected to be completed in the second half of 2023), no certainty exists at the present time that the town centre expansion will be realised.</p>

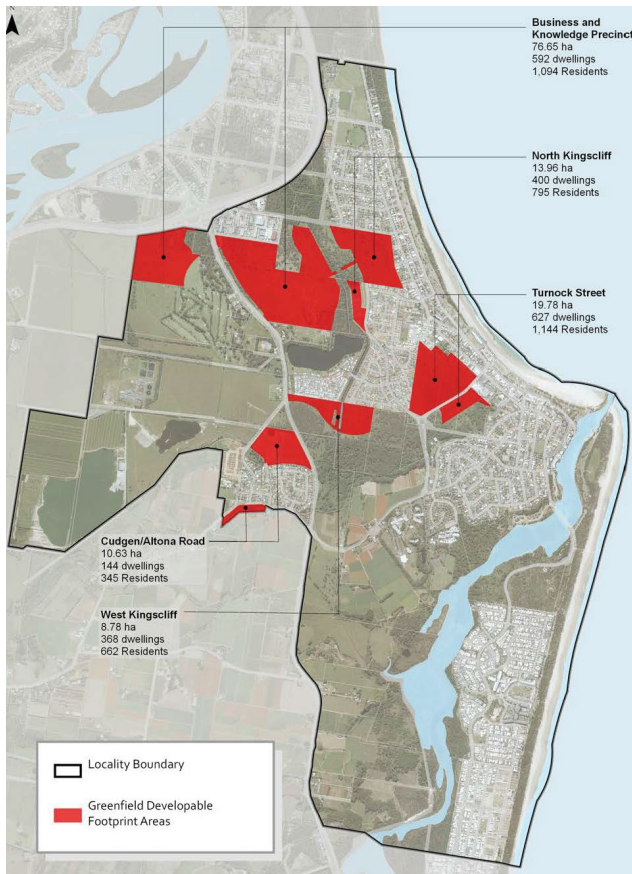


Figure 10: Identified potential greenfield release

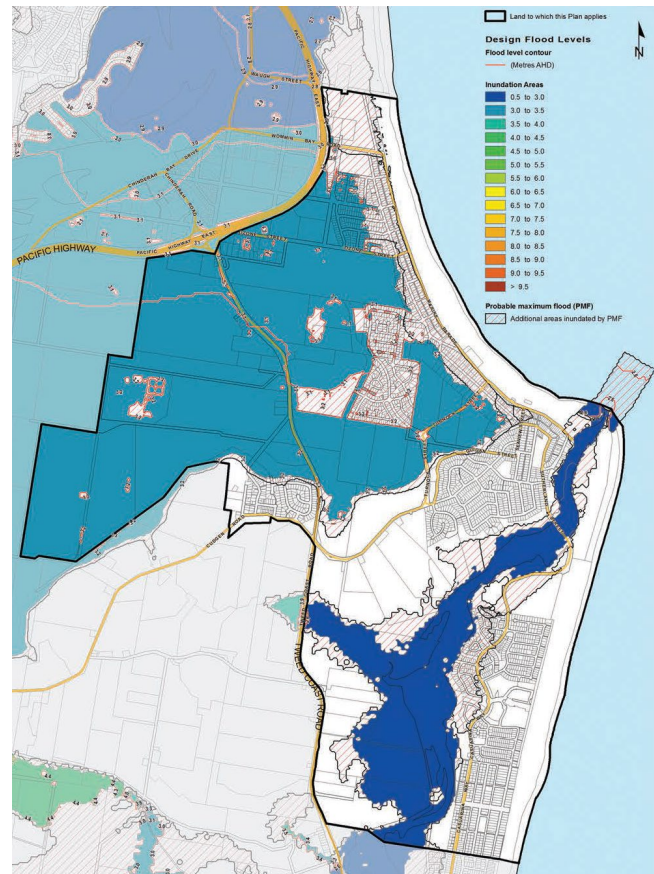


Figure 11: Flooding

(Source: Kingscliff Locality Plan 2020)

**Note:** The flood map is an extract from the 2009 Tweed Valley Flood Study Update and 2010 Tweed-Byron Coastal Creek Flood Study.

## 3.2 Local

Council has advised that the planning proposal is consistent with the planning priorities and actions of Council's Local Strategic Planning Statement (LSPS) 2020. In particular, planning priority 14 actions 14.1 and 14.2 relate to the continued preparation of town and village locality plans and review of the planning framework to support the local character and community visions identified in locality plans.

However, the proposed reduction in densities through height and zone changes in Kingscliff may potentially drive the need for Council to consider additional greenfield land to provide for a growing population in the longer term. This is considered inconsistent with LSPS planning priority 15 which encourages future growth to be compact and infill within existing urban footprints to minimise the spread of urban development into sensitive environmental and agricultural hinterlands.

Further, LSPS planning priority 16 advocates for inclusive, affordable and diverse housing. While the planning proposal notes that the North Kingscliff Precinct R3 zoning will provide for more diverse and affordable low rise medium density housing, no evidence has been provided to sufficiently demonstrate that retention of the 9m height limit will achieve the intended outcome.

### 3.3 Section 9.1 Ministerial Directions

The planning proposal is considered to be generally consistent with all relevant section 9.1 Directions, except as discussed below.

**Table 4 section 9.1 Ministerial Direction assessment**

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
1.1 Implementation of Regional Plan	Inconsistent	The proposal is inconsistent with this direction for the reasons discussed in section 3.1 of this report relating to the North Coast Regional Plan 2041. These inconsistencies are considered not to be of minor significance.
4.3 Planning for Bushfire Protection	Unresolved	This direction is relevant as part of the land to which the proposal applies is identified as bushfire prone land or located within proximity to bushfire prone land. The direction requires that the planning proposal authority must consult with the Commissioner of the NSW Rural Fire Service (RFS). Consultation with the RFS is required after a Gateway determined is issued. Until this consultation has occurred, the inconsistency of the proposal with this Direction remains unresolved.
6.1 Residential Zones	Inconsistent	<p>The proposal is inconsistent with this direction as it affects land within an existing and proposed residential zone and seeks to limit the choice and availability of housing in the area by reducing building heights.</p> <p>For the reasons discussed above regarding the North Coast Regional Plan 2041 this inconsistency is considered not to be of minor significance.</p>
7.1 Business and Industrial Zones	Inconsistent	<p>The proposal is inconsistent with this direction as it would reduce the height from 13.6m to 11m in the B4 Mixed Use Zone along Marine Parade and therefore the total potential floor space area for retail and commercial uses.</p> <p>For the reasons discussed above regarding the North Coast Regional Plan 2041 this inconsistency is considered not to be of minor significance.</p>

### 3.4 State environmental planning policies (SEPPs)

The planning proposal is considered to be generally consistent with all relevant SEPPs.

## 4 Site-specific assessment

### 4.1 Environmental

As the locations affected by the proposal are existing urban areas the proposal is considered unlikely to result in any adverse environmental impacts.



As some of the sites are affected by or located within proximity to bushfire prone land, consultation with the NSW RFS is required prior to finalisation of the LEP amendment. While some of the land may be flood affected, no adverse impact is anticipated as the proposal only seeks to decrease the development potential of the land.

## 4.2 Social and economic

There has been community input in relation to the proposed height and land zone changes as part of Council's Locality Plan and DCP process. The planning proposal indicates that height limits and zones have been identified to retain the preferred local character determined by the community.

While character retention is encouraged, the proposal is considered to be inconsistent with the longer-term housing, density and employment goals of the NCRP 2041 and Council's LSPS. In terms of social outcomes and potential economic impacts, there may be benefit in progressing the proposal once the outcomes of Council's LGA-wide Growth Management and Housing Strategy are known to provide the broader context in consideration of the LEP amendment. It is also noted that without a stronger evidence base to support the proposal, the removal of the development potential from the identified sites and the adverse economic impact it would have on landowners may not be warranted.

## 4.3 Infrastructure

There is not expected to be any significant change in demand for public infrastructure as a result of this planning proposal.

# 5 Consultation

## 5.1 Community

Council does not specify a community consultation period. Should the proposal proceed, a period of 20 days is considered appropriate consistent with the Department's LEP Making Guideline for a standard LEP.

## 5.2 Agencies

The proposal does not specifically raise which agencies will be consulted. The NSW Rural Fire Service will need to be consulted and given 30 days to comment.

# 6 Timeframe

Council proposes a 9 month time frame to complete the LEP. This aligns with the LEP Making Guideline benchmark timeframe for a standard planning proposal and is considered appropriate.

# 7 Local plan-making authority

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

As the planning proposal is inconsistent with the housing, density, and employment goals of the North Coast Regional Plan 2041, and with section 9.1 Directions 1.1 Implementation of Regional Plans, 6.1 Residential Zones and 7.1 Business and Industrial Zones, the Department recommends that Council not be authorised to be the local plan-making authority for this proposal should it be determined to allow the proposal to proceed.

## 8 Assessment summary

Based on the assessment in this report, it is recommended that the planning proposal not proceed to Gateway.

Although the proposal gives effect to a component of Council's adopted Kingscliff Locality Plan, the proposal does not adequately demonstrate consistency with the long-term housing, density, and employment goals of North Coast Regional Plan 2041 and related s9.1 directions.

The establishment of reduced height controls and zone changes for Kingscliff is considered premature prior to completion of Council's Growth Management and Housing Strategy and flood planning work which will provide greater certainty on greenfield release.

## 9 Recommendation

It is recommended the delegate of the Secretary determine that the planning proposal should not proceed as it does not demonstrate sufficient strategic merit, as the proposal:

- is inconsistent with section 9.1 Directions 1.1 Implementation of Regional Plans, 6.1 Residential Zones and 7.1 Business and Industrial Zones;
- is inconsistent with the long-term housing, density, and employment goals of North Coast Regional Plan 2041;
- does not adequately quantify the impact on housing opportunities in Kingscliff or impact on the continued viability of the Kingscliff town centre.



18/5/23

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