



## Gateway determination report – PP-2024-2340

Amend minimum lot size applying to 133-193  
Dulguigan Road, Dulguigan and rezone part of the  
land to C3 Environmental Management (0 homes, 0  
jobs)

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# Acknowledgment of Country

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

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

Relevant reports and plans
Council report and resolution (Dec 2024)
Planning proposal for gateway determination (Nov 2024)
Northern Councils E Zone Review – Final Recommendations Report
Ecological assessment (Nov 2024)
Preliminary bushfire risk assessment (Oct 2024)
Land use conflict risk assessment (Aug 2024)
Conceptual stormwater management plan (May 2024)
Engineering infrastructure report (May 2024)
Preliminary acid sulfate soil investigation (Mar 2024)
Preliminary site contamination assessment (Mar 2024)
Onsite sewage management assessment (Jan 2024)
Aboriginal cultural heritage report (Sep 2023)
Preliminary subdivision concept plan (Mar 2023)
Assessment against NSW Coastal Design Guidelines 2023

# 1 Planning proposal

## 1.1 Overview

**Table 2 Planning proposal details**

LGA	LGA name
PPA	Tweed Shire Council
NAME	Amend minimum lot size applying to 133-193 Dulguigan Road, Dulguigan and rezone part of the land to C3 Environmental Management (0 homes, 0 jobs)
NUMBER	PP-2024-2340
LEP TO BE AMENDED	Tweed Local Environmental Plan 2014
ADDRESS	133-193 Dulguigan Road, Dulguigan
DESCRIPTION	Lot 1 DP 328107, Lot 1 DP 364474, Lot 1 DP 376131, Lot 1 DP 410859, Lot 8 DP 755685, Lot A DP 174886
RECEIVED	13/12/2024
FILE NO.	IRF24/2948
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 objective of the planning proposal (**Attachment A**) is to enable reconfiguration of 6 existing rural lots with dwelling entitlements into 6 lots that will allow for more appropriate development of future dwelling-houses away from flood-affected areas and environmental constraints and which better support ongoing agricultural activity in the area. This will be achieved via a change to the applicable minimum lot size (MLS) map for the subject land.

While this objective is clear, when deciding to progress the planning proposal for a Gateway determination, Council resolved to broaden the scope to apply a C3 Environmental Management zone to part of the site identified as containing potential high environmental value. The submitted planning proposal does not however contain any assessment or justification in relation to the proposed C3 zone.

It is recommended that a condition be included in the Gateway determination to require that the planning proposal be updated throughout to identify, assess, and justify the proposed C3 zoning prior to agency and community consultation. This includes how the proposed zone complies with the Northern Councils E Zone Review – Final Recommendations Report (2015).

## 1.3 Explanation of provisions

The proposal seeks to amend the Tweed Local Environmental Plan (LEP) 2014 to achieve the intended outcomes as follow:

- amend the MLS map (LSZ\_004) applying to the site based on a preliminary concept subdivision layout showing proposed lots ranging from 1.6 ha to 53.5 ha (Figure 1). Apart from the subdivision concept plan, Council has not given an indication of the proposed lot size nor provided any related mapping.
- amend the Land Zoning map (LZN) as per Council's December 2024 resolution, to rezone part of the site to Zone C3 Environmental Management. Council has not included this matter in the explanation or provisions.

The explanation of provisions is to be revised to clearly specify the proposed amendments to the minimum lot size and land zone controls. A suitable condition is recommended for inclusion in the Gateway determination.

## 1.4 Site description and surrounding area

The site is located approximately 5.5 km north of Murwillumbah and comprises a rural holding of six lots ranging in size from 1.8 ha to 44.2 ha totalling approximately 101ha in area (Figures 1-2). The site is zoned partly RU2 Rural Landscape and RU1 Primary Production (Figure 3), with a 40-hectare minimum lot size and 10 metre building height requirement.

Elevated areas in the north and central parts of the site slope towards the floodplain in the east and south. The Rous River forms the southern boundary and Dulguigan Road bisects the site, providing vehicular access.

The floodplain is primarily used for sugar cane farming, while the rest of the site consists of undulating hills with scattered vegetation, two large farm structures to the southeast, and a dwelling in the west. Intermittent watercourses and a network of agricultural drains traverse the land. Surrounding properties are predominantly agricultural, with sugar cane and livestock grazing, and rural residential development to the west.

The site is mapped as containing important farmland (Figure 4), bushfire prone land (Figure 5), acid sulfate soils (Figure 6), potential high environmental value (HEV) land (Figure 7), flood prone land (Figure 8), and partly falls within the coastal use and coastal environment areas under SEPP (Resilience and Hazards) 2021 (Figures 9 & 10).

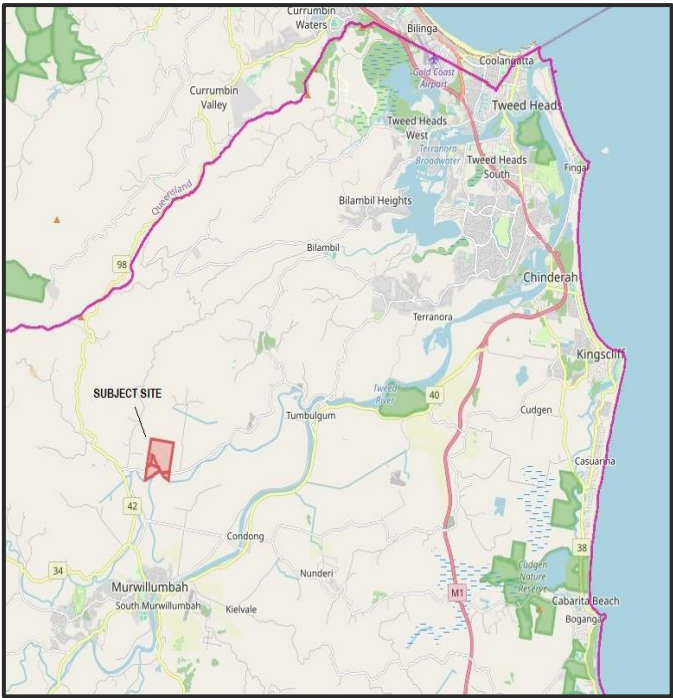


Figure 1 – Locality plan (source: Northern viewer)



Figure 2 – Subject site (source: Northern viewer)





Figure 3 – Existing zoning (source: Northern viewer)



Figure 4 – Important farmland (source: Northern viewer)



Figure 5 – Bushfire prone land (source: ePlanning viewer)



Figure 6 – Acid sulfate soils (source: Northern viewer)

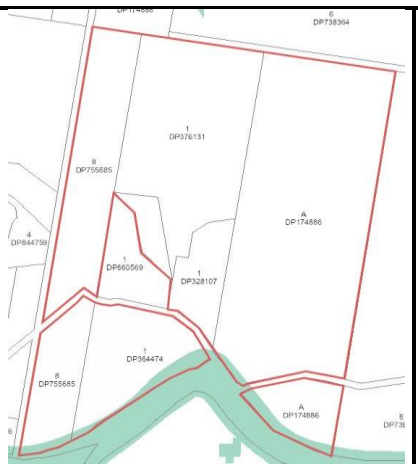


Figure 7 – High environmental value (source: Northern viewer)



Figure 8a – Flood liable land (1:100-year flood) (source: Tweed Council property flood maps)

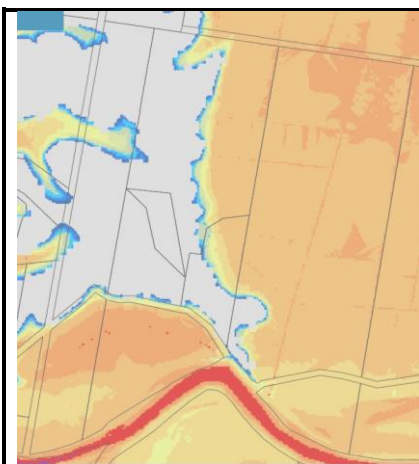


Figure 8b – Flood liable land (Probable Maximum Flood) (source: Tweed Council property flood maps)



Figure 9 – Coastal use area (source: Northern viewer)

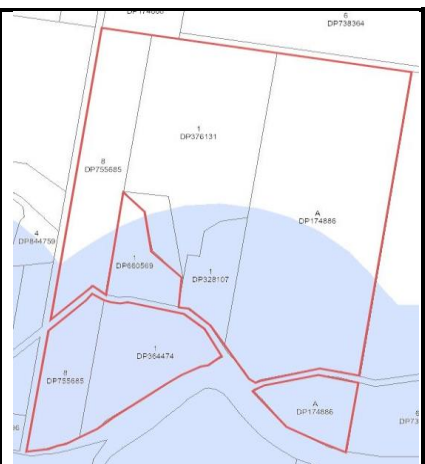


Figure 10 – Coastal environment area (source: Northern viewer)



## 1.5 Mapping

The proposal does not include mapping showing the proposed changes to the Tweed LEP 2014 LZN or MLS maps.

It is recommended that suitable mapping showing the existing and proposed minimum lot size and land zone changes be included in the planning proposal prior to agency and community consultation. A condition to this effect will be added in the Gateway determination.

Mapping that complies with the Standard Technical Requirements for Standard Instrument LEP Maps will need to be prepared prior to finalising the LEP amendment.

## 2 Need for the planning proposal

The planning proposal is not a result of an approved local strategy, study, or report. It has been initiated by the landowner and is supported by Council to enable a more appropriate subdivision layout for future dwellings.

The proposal notes that while each lot currently has a dwelling entitlement, the existing subdivision layout combined with environmental constraints, particularly flooding, limits opportunities to develop the dwellings and could result in less-than-optimal development outcome

A preliminary concept subdivision layout submitted in support of the proposal (Figure 11) suggests an improved outcome for the site with the clustering of future rural residential in the west consistent with adjoining rural residential development and the rationalisation of lot boundaries in the east and south to retain mapped Important Farmland in larger more viable agricultural lots.

Council staff have clarified that the proposed C3 zone has been strategically identified as part of the Tweed Conservation Zone Review (Stage 3) which identified land in the north of the site as containing native vegetation that meets the state government's criteria for an environmental conservation zoning.

The planning proposal is required to amend the minimum lot size map applying to the site to permit the boundaries of the existing lots to be realigned, with consent, and to apply a C3 Environmental Management zone to identify high environmental value land. The planning proposal is considered to be the best means of achieving the intended outcome.

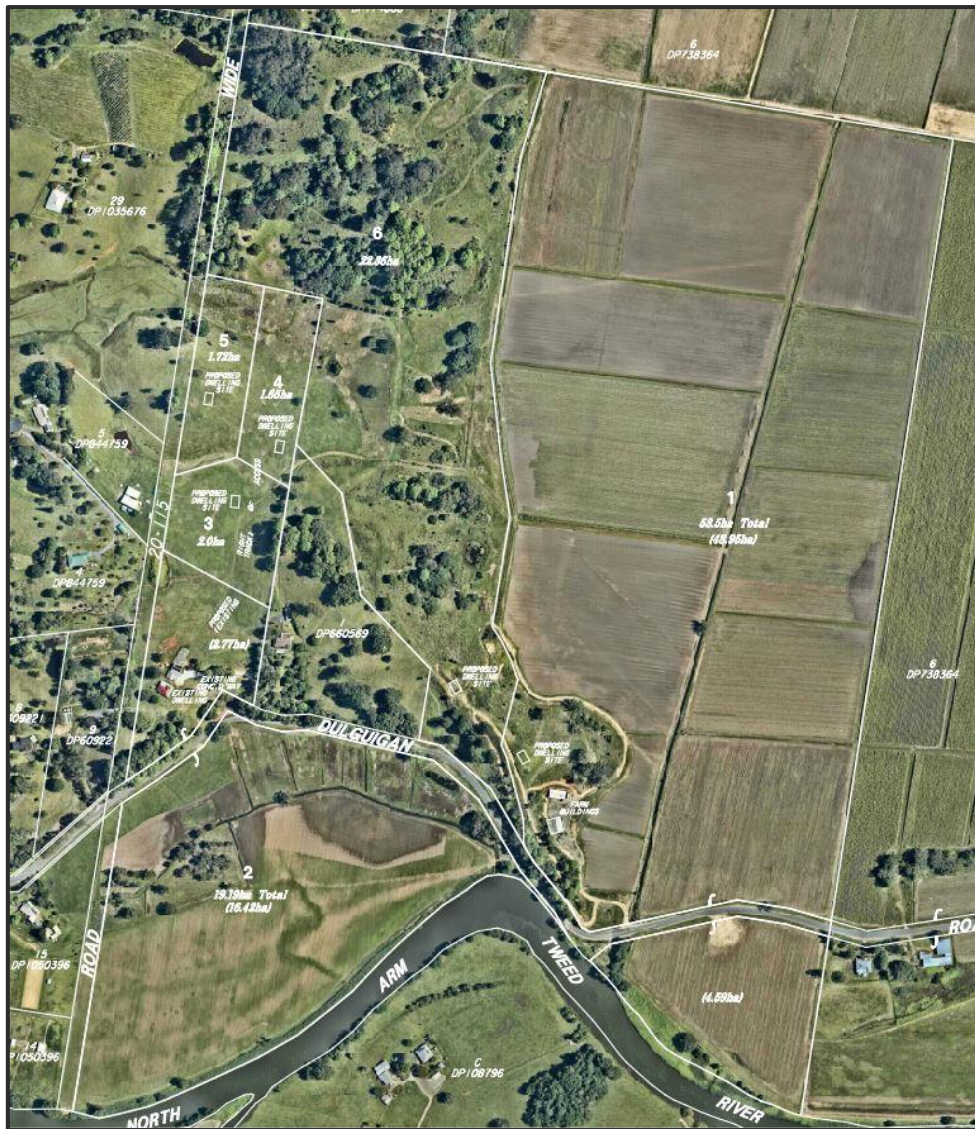


Figure 11 – Preliminary concept subdivision layout (source: Planning proposal)

## Strategic assessment

## 2.1 State

The Northern Councils E Zone Review Final Recommendations Report sets out clear criteria and methodologies for Far North Coast Councils to follow when seeking to apply environmental zones. This is further supported by Section 9.1 Ministerial Direction 3.4 Application of C2 and C3 Zones and Environmental Overlays in Far North Coast LEPs which requires councils to be consistent with the adopted recommendations.

A letter from the Department's former Secretary to Tweed Shire Council (1 March 2016) also provides further guidance on how to apply the final recommendations. The final recommendations also clarify that the application of environmental zones under the criteria only applies to land proposed for a conservation zone.

As discussed in more detail under section 3.1 of this report, the proposal is considered to be consistent with the Northern Councils E Zone Review Final Recommendations Report criteria methodology as Council has received landowners' agreement to the proposed C3 zoning.

**Attachment D** of this report provides a checklist for consistency with the E Zone Recommendations. Further consultation will however be required with various relevant government agencies (discussed in Part 5.2).

## 2.2 Regional Plan

The following table provides an assessment of the planning proposal against relevant aspects of the North Coast Regional Plan (NCRP) 2041.

**Table 3 – Regional Plan assessment**

Regional Plan Objectives	Justification
Objective 1: Provide well located homes to meet demand	The planning proposal is considered to be consistent with this objective as it will enable future housing choices consistent with existing rural residential development in the surrounding area and is supported by a number of specialist studies which indicate the preliminary lot layout is capable of providing for the proposed use.
Objective 3: Protect regional biodiversity and areas of high environmental value	The riparian edge along the southern boundary is mapped as potential HEV. This area is also mapped Important Farmland which will continue to be used for agricultural purposes and will not be impacted by future development. As such, the planning proposal is considered to be consistent with this objective.
Objective 4: Understand, celebrate and integrate Aboriginal culture	A cultural heritage assessment, prepared by Tweed Byron Aboriginal Land Council, has been submitted in support of the proposal. The report confirms that a walkover of the site and search of the Aboriginal Heritage Information Management System did not identify any objects, places, or areas of significance to Aboriginal people.
Objective 5: Manage and improve resilience to shocks and stresses, natural hazards and climate change	<p>Council's online flood mapping indicates that the site is subject to inundation in the event of a 1:100-year flood (Figure 8) which generally aligns with the extent of mapped Important Farmland (Figure 4).</p> <p>The proposal aims to reconfigure the existing lot layout in part to provide flood free dwelling sites on the elevated parts of the property to mitigate the risk of flooding hazard and is therefore considered to be consistent with this objective. Flooding is discussed in more detail under section 4.1 of this report.</p> <p>It is appropriate that consultation on this matter occur with the Department of Climate Change, Energy, the Environment and Water - Biodiversity Conservation and Science (BCS) and forms a condition of the Gateway determination.</p> <p>Furthermore, while the site is subject to bushfire risk and acid sulfate soils, it is considered that these matters are capable of being addressed as part of the development application process. It should also be noted that consultation is required to be undertaken with the NSW Rural Fire Service (RFS) as a condition of the Gateway determination.</p>
Objective 8: Support the productivity of agricultural land	The proponent's preliminary concept subdivision layout (Figure 11) indicates an improved outcome with the clustering of rural residential development in the west and rationalisation of site boundaries in the east and south to maintain mapped Important Farmland in larger agricultural lots.

Furthermore, a Land Use Conflict Risk Assessment (LUCRA) submitted in support of the proposal has identified and considered potential sources of conflict, both within the site, and between the site and surrounding land uses. The assessment has recommended appropriate building setbacks and vegetation buffers that are able to be implemented at the development application stage to minimise the potential for rural land use conflict.

## 2.3 Local

The Tweed Local Strategic Planning Statement (LSPS) 2020 establishes important land-use priorities and actions relevant to the proposal as discussed below:

- Priority 10 aims to safeguard agricultural land while fostering diverse economic opportunities through compatible industries, rural living, and recreation. Action 10.2 seeks to balance rural, urban, and environmental areas, which helps minimise conflicts and preserve agricultural capacity for future generations.
- Priority 17 focuses on the need for well-planned residential and rural residential housing. Action 17.2 emphasises avoiding conflicts in rural land use and respecting natural land features.

Given these priorities, the proposal to reconfigure the existing subdivision layout presents a viable solution. It allows for the development of already permissible additional rural dwellings outside flood-prone areas while protecting agricultural activities and environmental values. This approach is consistent with the goals established by the Council's LSPS.

## 2.4 Section 9.1 Ministerial Directions

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

**Table 5 - section 9.1 Ministerial Direction assessment**

Directions	Consistent / Not Applicable	Reasons for Consistency or Inconsistency
3.2 Heritage Conservation	Justifiably inconsistent	<p>The proposal is inconsistent with this direction as it does not contain provisions to facilitate heritage conservation such as matters of Aboriginal cultural significance.</p> <p>This inconsistency is considered to be of minor significance as a cultural heritage assessment report prepared by the Tweed Byron LALC submitted in support of the proposal, did not identify any Aboriginal items on or near the subject land.</p> <p>While the LALC has provided advice confirming the suitability of the proposal in terms of Aboriginal cultural heritage, it is recommended that the Gateway determination require formal consultation with the LALC to confirm the suitability of the proposal.</p>



3.4 Application of C2 and C3 Zones and Environmental Overlays in Far North Coast LEPs	Unresolved	<p>Despite landowner agreement to the proposed C3 zone and Council's statement that the rezoning meets the eligibility requirements of the Northern Councils E Zone Review Final Recommendations Report, consistency of the proposal with this Direction is unable to be resolved until a number of matters such as consultation with the NSW RFS, BCS and DPI to verify the primary use and site attributes of the land has been undertaken. Consistency of the proposal with this direction therefore remains unresolved.</p>
4.1 Flooding	Unresolved	<p>The proposal is inconsistent with this direction as the site is mapped as flood prone land and does not include provisions that give effect to the NSW Flood Prone Land Policy, the principles of the Floodplain Development Manual 2005, the Considering Flooding in Land Use Planning Guidelines 2021, or any adopted flood study and or floodplain risk management plan.</p> <p>Whilst the planning proposal has indicated that future dwelling sites are able to be located on flood free land, and it appears that these sites will also be above the PMF, the proposal has not addressed flooding of the subject land in any significant detail.</p> <p>As discussed in Part 3 of this report, the planning proposal is required to be updated to address flooding of the site in more detail, particularly in relation to PMF flood and hazard levels prior to exhibition. Until such time that this condition has been met and consultation has been undertaken with Biodiversity and Conservation Services (BCS), consistency with this direction remains unresolved.</p>
4.2 Coastal Management	Justifiably inconsistent	<p>The proposal is inconsistent with this direction as part of the site is mapped as 'coastal environment area' and 'coastal use area' under SEPP (Resilience and Hazards) 2021 and the planning proposal does not give effect to the objectives of the Coastal Management Act 2016, the NSW Coastal Management Manual, the NSW Coastal Design Guidelines 2003 or any relevant Coastal Management Program.</p> <p>This inconsistency is considered to be of minor significance as the proposal does not seek to provide any increased development potential and is considered to be generally consistent with the regional and local planning framework. The planning proposal is also supported by a completed NSW Coastal Design Guideline</p>

		Assessment checklist which indicates no impact to either the coastal use or coastal environment area.
4.3 Planning for Bushfire Protection	Unresolved	<p>The planning proposal is potentially inconsistent with this direction as the proposal applies to land identified as being bushfire prone.</p> <p>This direction requires that Council consult with the Commissioner of the NSW Rural Fire Service (RFS) following the issue of a Gateway determination. Until this consultation has occurred the inconsistency of the proposal with this direction remains unresolved.</p>
9.2 Rural Lands	Justifiably inconsistent	<p>The proposal is inconsistent with this direction as it will affect land within an existing or proposed rural or conservation zone (including the alteration of any existing rural or conservation zone boundary) and does not address and satisfy all of the requirements listed in the direction.</p> <p>This inconsistency is considered to be of minor significance as the proposal will create opportunities for a small number of rural dwellings while protecting and enhancing the site's environmental characteristics and supporting agricultural activities on larger lots mapped as important farmland by the NCRP 2041.</p> <p>Additionally, it is supported by a LUCRA that recommends appropriate mitigation measures at the DA stage to minimise the potential for rural land use conflict.</p> <p>It is recommended that consultation on this matter occur with the Department of Primary Industries and Regional Development - Agriculture and Biosecurity and forms a condition of the Gateway determination.</p>

## 2.5 State environmental planning policies (SEPPs)

The planning proposal is considered to be consistent with the provisions of all relevant SEPPs.

## 3 Site-specific assessment

### 3.1 Environmental

The following table provides an assessment of the potential environmental impacts associated with the proposal.



Table 9 Environmental impact assessment

Environmental Impact	Assessment
Biodiversity	<p>At the time of resolving to progress the planning proposal for a Gateway determination, Council also broadened the proposal's scope to apply a C3 zone to an area in the north of the site (Figure 12).</p> <p>Council staff have clarified that the proposed C3 zone has been strategically identified as part of the Tweed Conservation Zone Review (Stage 3) which is still in preparation. The application of the C3 zone was made with the agreement of the landowner and is therefore consistent with the Northern Councils E Zone Review Final Recommendations Report.</p> <p>Council has identified this area as containing high ecological value HEV due to its native vegetation, which they advise meets the NSW state government criteria for a conservation zone under the E Zone Review and also serves as habitat for the threatened koala species. Cleared land with potential for restoration has also been included to ensure suitable land is available for habitat restoration activities that are likely to be required to comply with Council's Development Control Plan Part A19 Biodiversity and Habitat Assessment.</p> <p>Council has indicated that although the land potentially qualifies for a C2 Environmental Conservation Zone based on the Northern Councils E Zone Review Final Recommendations Report, a C3 zone has been proposed to maintain consistency with the methodology being applied in the Tweed Conservation Zone Review (Stage 1).</p> <p>For the Stage 1 Review, Council's policy has been to apply a C3 zoning to land located in a rural context, even when the criteria for a C2 zone are met. This approach recognises that the E Zone Review Final Recommendations Report includes several supplementary considerations (recommendations 6-18) that allow for some flexibility in the application of C zones and their associated planning controls.</p> <p>Based on this reasoning, it is considered that the proposed C3 zone will be implemented in accordance with the Northern Councils E Zone Final Recommends Report.</p> <p>It is considered appropriate that consultation occur with BCS in relation to this matter and forms a condition of the Gateway determination.</p> <p>As noted in Section 1.2 of this report, the planning proposal is to be updated prior to agency and community consultation to clearly identify, assess, and justify the proposed C3 zone.</p>



Figure 12 – **Proposed C3 Zone** (dark orange shading)  
(source: Planning report to Tweed Shire Council Meeting December 2024)

<p>Flooding hazard</p>	<p>The planning proposal notes that the site is subject to partial inundation in the event of a 1% Annual Exceedance Probability (1:100 year) flood and the probable maximum flood (PMF) and that the proposed lots will provide opportunity for dwellings to be located away from flood affected areas. Figures 13 and 14 enable comparison of the proponent's conceptual lot layout against Council's mapped 1:100 year and PMF flood events.</p> <p>The proposal's supporting Stormwater Management Plan states that "<i>An investigation of flooding affecting the subject site has demonstrated that all proposed residential dwelling pads comply with the minimum design flood levels, i.e. the 1% AEP flood levels at 4.4m and will have high level road and/or pedestrian access to land above the probable maximum flood level at RL 9.2m.</i>"</p> <p>Limited assessment of flooding impact is provided in the planning proposal. Prior to agency and community consultation, the proposal should be updated to adequately demonstrate that suitable building envelopes can be established with minimal impact on localised flooding and include detail about the PMF flood level, PMF hazard levels, velocity, flood planning levels, access to critical services during flood events, and proposed evacuation routes. The Department's recently released (January 2025) <i>Shelter-in-Place Guideline for flash flooding</i> should also be addressed if shelter-in place forms part of Council's emergency management response.</p> <p>Consultation with BSC – Flooding and NSW State Emergency Service (SES) is also required.</p> <p>An appropriate condition to address the matters detailed above is recommended for inclusion in the Gateway determination.</p>
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Figure 13 – Concept layout and 1:100-year flood

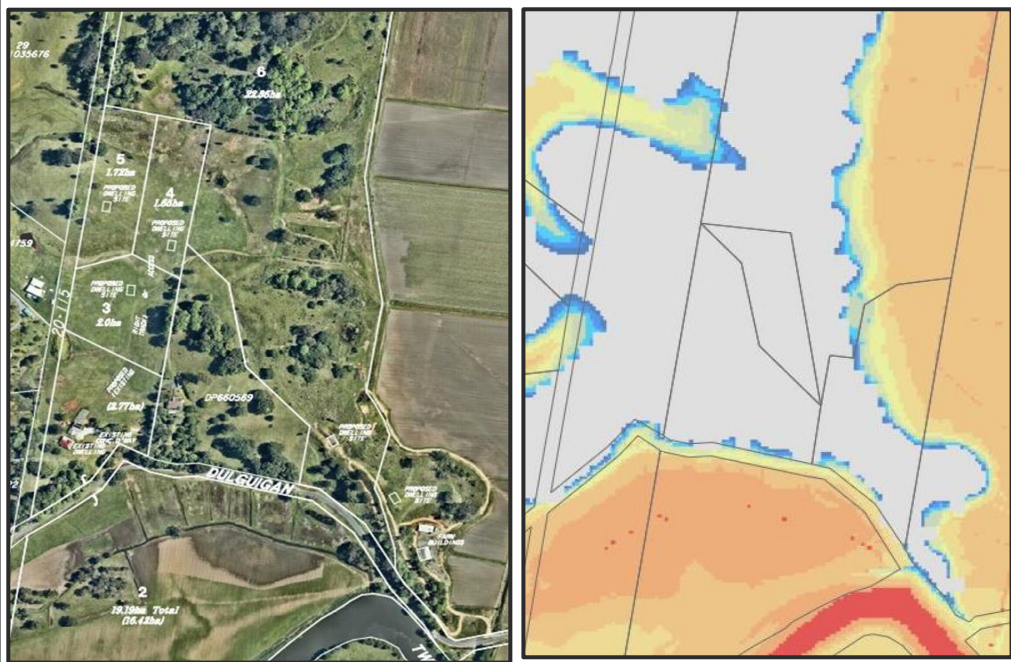


Figure 14 – Concept layout and PMF

Stormwater management	The proposal is supported by a Conceptual Stormwater Management Plan which has concluded, based on hydrological analysis, that onsite stormwater detention will not be required to service future housing development.
Bushfire hazard	<p>A Preliminary Bushfire Risk Assessment has been submitted in support of the proposal. The assessment has considered bushfire risk and recommended appropriate mitigation measures that are able to be implemented at the development application stage.</p> <p>As previously noted, consistency with section 9.1 Direction 4.3 Planning for Bushfire Protection is unable to be resolved until consultation with the NSW RFS has occurred and forms a condition of the Gateway determination.</p>



Potential land contamination	<p>A Preliminary Contamination Investigation undertaken to support the proposal identified lead-impacted soil and asbestos within the site. The investigation concluded that the site is considered suitable for development subject to remediation of the lead-impacted soil and assessment to identify any asbestos material to inform its removal within and around proposed future dwelling sites.</p> <p>The planning report to the December 2024 Council meeting also states that at the development application (DA) stage, a Detailed Site Investigation will be required to address the proposal in accordance with SEPP (Resilience and Hazards) 2021 and the NSW Environmental Protection Authority contaminated land guidelines.</p> <p>Consideration of this matter is not adequately addressed in the planning proposal. The proposal should be updated prior to agency and community consultation to accurately identify the findings of the Preliminary Contamination Investigation and to confirm the requirement for a Detailed Site Investigation at DA stage. An appropriate condition is recommended for inclusion in the Gateway determination.</p>
Acid sulfate soils	<p>A Preliminary Acid Sulfate Soil investigation prepared in support of the proposal identifies the site as containing Class 2, 3 and 5 acid sulfate soil (ASS) with existing and proposed future dwellings located within the elevated Class 5 areas only. No disturbance of ASS is expected as a result of the proposal and Council's LEP contains suitable provisions to address this matter if required at the DA stage.</p>
On-site sewage management	<p>An Onsite Wastewater Management Assessment submitted in support of the proposal concludes that the site and soil characteristics of the land are suitable for the use of onsite wastewater, subject to appropriate mitigation measures.</p>

## 3.2 Social and economic

Reconfiguration of the lot boundaries as proposed, is not considered likely to result in any adverse social or economic impacts.

The proponent's LUCRA submitted with the proposal has identified potential risks and recommends suitable mitigation measures for implementation at the DA stage to minimise the potential for rural land use conflict.

Consultation with the Department of Primary Industries and Regional Development - Agriculture is recommended and forms a condition of the Gateway determination.

## 3.3 Infrastructure

There is no new or additional demand for state or local infrastructure arising from this planning proposal. Any proposed future development of the site will require an assessment of the availability and adequacy of local infrastructure needed to support a proposal.

# 4 Consultation

## 4.1 Community

Council proposes a community consultation period of not less than 14 days.

An exhibition period of 20 working days is considered appropriate, consistent with the Department's LEP Making Guideline (Aug 2023) for a standard LEP and forms the conditions of the Gateway determination.

## 4.2 Agencies

The proposal does not specify which agencies will be consulted.

It is recommended the following agencies be consulted on the proposal and given 30 working days to comment:

- Department of Primary Industries and Regional Development - Agriculture
- Department of Climate Change, Energy, the Environment and Water - Biodiversity Conservation and Science
- NSW Rural Fire Service
- NSW State Emergency Service
- Tweed Byron Local Aboriginal Land Council

## 5 Timeframe

A timeframe of 9 months is recommended consistent with the benchmark timeframe for a standard planning proposal and advice to this effect is recommended in the Gateway determination. This does not preclude Council from making the LEP within a shorter period of time.

## 6 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 of local significance.

Consistent with the former Secretary's letter to Tweed Shire Council of 1 March 2016, an authorisation to act as the local plan-making authority cannot be issued where a planning proposal seeks to apply an environmental zone to land. This is to ensure a consistent approach to the finalisation of rezoning decisions consistent with the E Zone Review Final Recommendations Report. It is recommended that Council is not authorised to act as the local plan-making authority.

## 7 Assessment summary

The planning proposal is supported to proceed with conditions for the following reasons:

- the proposal is generally consistent with the North Coast Regional Plan 2041;
- the proposal is not inconsistent with the relevant planning priorities and actions of the Tweed Local Strategic Planning Statement;
- the proposal is consistent with the Final Recommendations of the Northern Councils E Zone Review.

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

- identify, assess, and justify the proposed C3 zone throughout, including how the proposed zone complies with the Northern Councils E Zone Review – Final Recommendations Report;
- clearly specify the proposed amendments to the Tweed LEP 2014 minimum lot size and land zone controls in the explanation of provisions;
- include suitable mapping showing the existing and proposed minimum lot size and land zone changes;
- include detail about the PMF flood level, PMF hazard levels, velocity, flood planning levels, and access to critical services during flood events to adequately demonstrate that suitable building envelopes can be established with minimal impact on localised flooding and

proposed evacuation routes. Shelter-in place should also be discussed if this forms part of Council's emergency management response; and

- accurately identify the findings of the Preliminary Contamination Investigation and confirm the requirement for a Detailed Site Investigation at the development application stage.

## 8 Recommendation

It is recommended the delegate of the Secretary:

- agree that any inconsistencies with section 9.1 Directions 3.2 Heritage Conservation, 4.2 Coastal Management, and 9.2 Rural Lands are minor or justified; and
- note that the consistency with section 9.1 Directions 3.4 Application of C2 and C3 Zones and Environmental Overlays in Far North Coast LEPs, 4.1 Flooding and 4.3 Planning for Bushfire Protection is unresolved and will require justification.

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

The following conditions are recommended to be included on the Gateway determination:

1. Prior to agency and community consultation, the planning proposal is to be updated to:
  - identify, assess, and justify the proposed C3 zone, including how the proposed zone complies with the Northern Councils E Zone Review – Final Recommendations Report;
  - clearly specify the proposed amendments to the Tweed LEP 2014 minimum lot size and land zone controls in the explanation of provisions;
  - include suitable mapping showing the existing and proposed minimum lot size and land zone changes;
  - include detail about the PMF flood level, PMF hazard levels, velocity, flood planning levels, and access to critical services during flood events to adequately demonstrate that suitable building envelopes can be established with minimal impact on localised flooding and proposed evacuation routes. Shelter-in place should also be discussed if this forms part of Council's emergency management response; and
  - accurately identify the findings of the Preliminary Contamination Investigation and confirm the requirement for a Detailed Site Investigation at the development application stage.
2. Consultation is required with the following public authorities:
  - Department of Primary Industries and Regional Development - Agriculture
  - Department of Climate Change, Energy, the Environment and Water - Biodiversity Conservation and Science (BCS)
  - NSW Rural Fire Service (RFS)
  - NSW State Emergency Service (SES)
  - Tweed Byron Local Aboriginal Land Council
3. The planning proposal should be made available for community consultation for a minimum of 20 working days.
4. The final planning proposal is to detail how the E Zone application process for the property has been satisfied in accordance with the review recommendations.

Given the nature of the planning proposal, it is recommended that the Gateway not authorise Council to be the local plan-making authority and that the LEP be completed within 9 months of the date of the Gateway determination.





\_\_\_\_\_ (Signature)

21 January 2025 (Date)

Gina Davis

Acting Manager, Hunter and Northern Region

Local Planning and Council Support



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21/1/25

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