



# Gateway determination report – PP-2024-927

To identify 'depots' as an additional permitted use with consent at 84-92 Chinderah Bay Drive, Chinderah

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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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### Relevant reports and plans

Planning Proposal – Version 1 April 2024 (Tweed Shire Council)

# 1 Planning proposal

## 1.1 Overview

Table 1 Planning proposal details

<b>LGA</b>	<b>Tweed</b>
<b>PPA</b>	<b>Tweed Shire Council</b>
<b>NAME</b>	<b>To identify ‘depots’ as an additional permitted use with consent at 84-92 Chinderah Bay Drive, Chinderah (0 homes, 0 jobs)</b>
<b>NUMBER</b>	<b>PP-2024-927</b>
<b>LEP TO BE AMENDED</b>	<b>Tweed LEP 2014</b>
<b>ADDRESS</b>	<b>84, 86, 88, 90 &amp; 92 Chinderah Bay Drive, Chinderah</b>
<b>DESCRIPTION</b>	<b>Lot 5 DP 501046, Lots 7 &amp; 8 DP 216403 &amp; Lot 10 DP 1037066</b>
<b>RECEIVED</b>	<b>3/05/2024</b>
<b>FILE NO.</b>	<b>IRF24/1013</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 objectives of the planning proposal are to:

- facilitate future changes and expansion of the existing waste management business office and depot facility on the site to meet the demand generated by the ongoing population growth in the region; and
- enable a future development application to be considered on its planning merits.

The objectives of this planning proposal are clear and adequate.

## 1.3 Explanation of provisions

The planning proposal seeks to amend the Tweed Shire Council LEP 2014 by:

- The insertion of a provision in Schedule 1 Additional Permitted Uses of the Tweed LEP 2014 (TLEP) to permit ‘Depots’ with consent on land at Lot 5 DP 501046, Lots 7 & DP 216403 and Lot 10 DP 1037066, 84,86, 88, 90 & 92 Chinderdah Bay Drive, Chinderah.

The planning proposal does not propose any change to zoning or other development standards relevant to the subject site. It is noted that Part 10 incorrectly states that the planning proposal seeks to allow two new land uses on the subject site. This is to be corrected prior to consultation.

Consequential to the above, the planning proposal will also need to update the related APU map to show the permitted use on the subject land. The planning proposal should be updated prior to public exhibition to include this map.

### 1.4 Site description and surrounding area

The subject site is located at Chinderah, adjacent to the Tweed River and consists of 4 lots with a total area of approximately 2.27ha. Chinderah is located approximately 10km south of Tweed Heads and 4 kms north-west of Kingscliff (Figure 1). The subject site is currently occupied by Solo Resource Recovery, the current Tweed Shire Council waste contractors and is used for their head office, vehicle storage, repairs and maintenance (Figure 2). A substantial portion of the subject site is used for parking and storage of vehicles. Solo Waste (previously J.J Richards and Sons) first occupied the site in 1950 as a small workshop and the site has continued to be used as a depot since this time.

The subject site is zoned MU1 Mixed Use under Tweed LEP 2014 (Figure 3). Depots are prohibited within this zone. It is noted the proposal also makes reference to the former B4 Mixed Use Zone. This reference should be updated prior to consultation.

Land uses adjoining the subject site consist of a group of local shops and properties fronting Waugh St to the north, the Kingscliff Seventh Day Adventist church to the east, the Chinderah Tourist Village to the south and the Tweed River and associated open space facilities to the west.

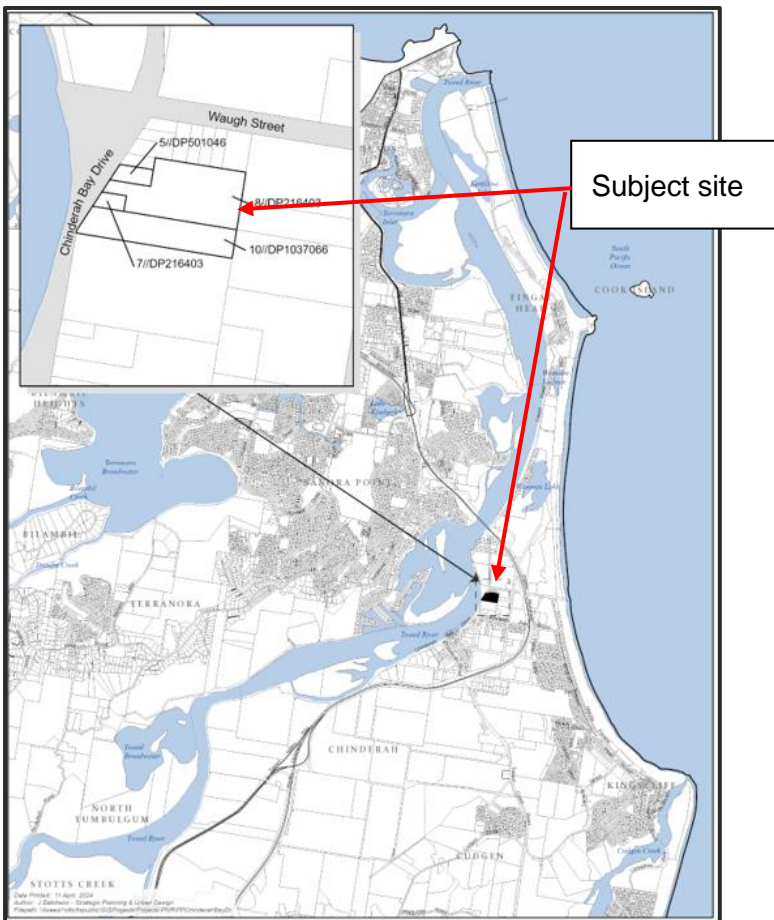


Figure 1 Site context (source: Planning proposal)



Figure 2 Subject site context (source: Planning proposal)

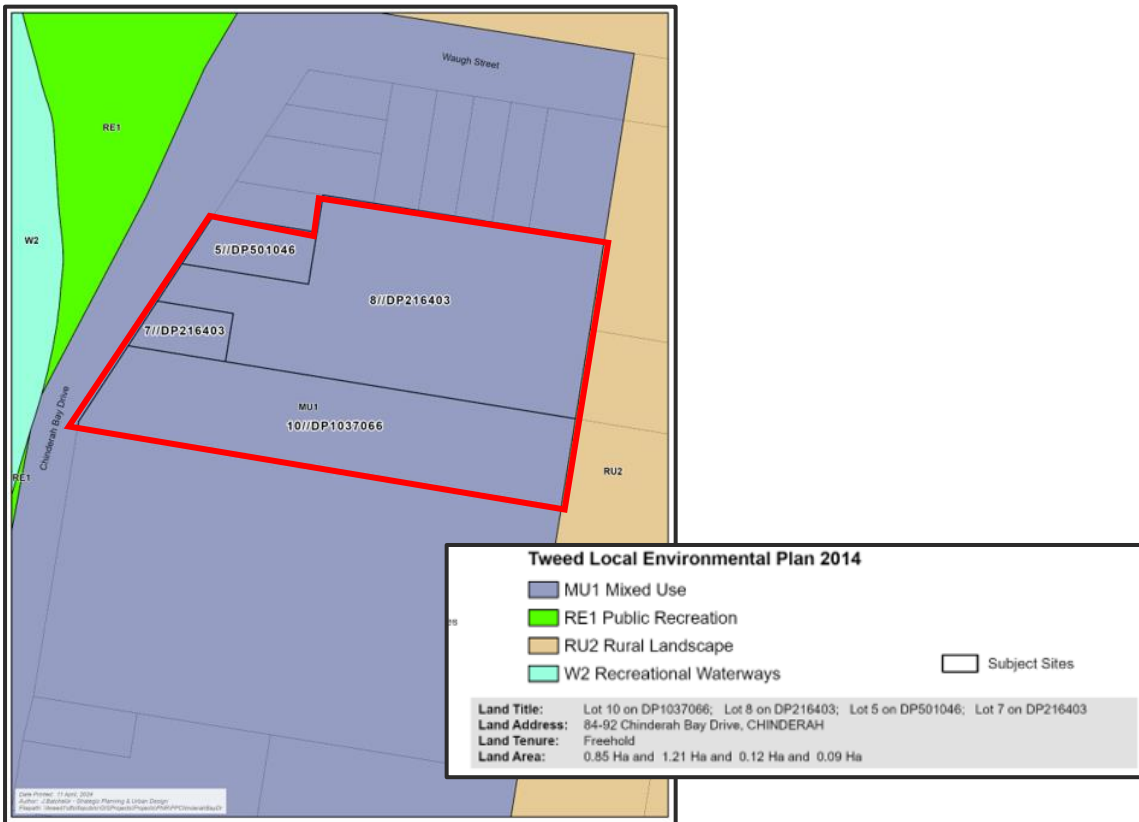


Figure 3 - Zoning of subject land (source: Planning proposal)

## 1.5 Mapping

Whilst the planning proposal includes generic mapping showing site location and zoning, Part 4 'Mapping' has been left blank. Prior to public exhibition, the planning proposal is to be amended to include the proposal APU map related to the subject site.

## 1.6 Background

The subject site has been used by Solo Resource Recovery for the past 70 years as their head office, vehicle storage and maintenance area. The design and manufacture of vehicles has also been undertaken on the site. During this period, the use has expanded to meet the needs of the growing population in north-eastern New South Wales and advances in waste management. The proponent has advised that further expansion is required to meet this demand, particularly as there is an identified need to provide additional light industrial and/or depot buildings on the site for the purposes of fabricating, maintaining and storing waste management plant and equipment.

## 2 Need for the planning proposal

The planning proposal is not the result of any strategy or study.

Under the current Tweed LEP 2014, the subject site is zoned MU1 Mixed Use. Depots are prohibited in the MU1 Zone. A "depot" is defined in the LEP as a building or place used for the storage (but not sale or hire) of plant, machinery or other goods (that support the operations of an existing undertaking) when not required for use but does not include a farm building.

The planning proposal to permit a depot on the land with consent is needed to facilitate the existing and ongoing depot use of the land which has been occurring for over 70 years. It will also allow Council to consider future changes to the operations through a development application, rather than having to rely on and be limited to the existing use provisions under the *Environmental Planning and Assessment 1979*.

The alternatives of rezoning the land or amending the land use table to permit depots in the MU1 Zone are not considered suitable as they would either permit other uses that would not be suitable for the site or allow depots in other unsuitable MU1 Zone locations.

The planning proposal for an APU to permit a depot with consent on the subject site is considered to be the best means of achieving the objectives and intended outcomes.

## 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 2041 (NCRP).

**Table 2 Regional Plan assessment**

Regional Plan Objectives	Justification
Objective 5: Manage and improve resilience to shocks and stresses, natural	The land is mapped as being affected by flooding (Figures 5, 6 & 7) and acid sulfate soils (Figure 9). It is also located within the sensitive coastal strip as defined by the NCRP and is mapped as a 'Coastal Use Area' and a 'Coastal Environment Area' under SEPP (Resilience and Hazards) 2021 (Figures 8 & 9).



hazards and climate change.	Noting the existing nature of the site, it is considered that sufficient information has been submitted with the planning proposal to indicate that these hazards are capable of being addressed at the development application stage subject to relevant agency confirmation during the planning proposal consultation process.
Objective 11: Support cities and centres and co-ordinate the supply of well-located employment land	The proposal supports this objective as it takes advantage of existing infrastructure and seeks to accommodate the capacity for cost-effective expansion, maximising the efficient use of existing employment land, whilst reducing costs and limiting environmental impacts.

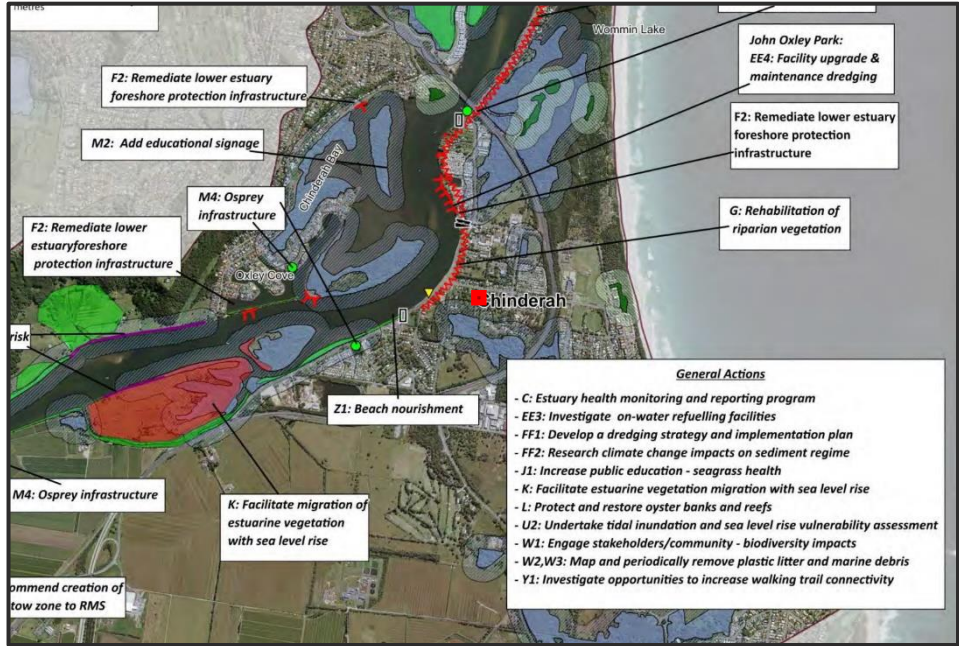
## 3.2 Local

The proposal is consistent with the following local plans and endorsed strategies as discussed below.

**Table 3 Local strategic planning assessment**

Local Strategies	Justification
Local Strategic Planning Statement (LSPS)	<p>The planning proposal is considered to be consistent with Council's LSPS, in particular the following planning priorities:</p> <p><i>Planning Priority 1:</i> Protect the Tweeds significant natural environment, resources and landscape qualities, while cultivating sustainable growth and development which promotes the health and vitality of the community.</p> <p>The subject land is located within the coastal strip and directly adjacent to the Tweed River. The intended outcome of the planning proposal will enable efficient use of an existing site with no anticipated adverse impact on the scenic landscape or the natural environment.</p> <p><i>Planning priority 6:</i> Promote a strong, sustainable and diverse economy with a robust economic policy framework to facilitate investment and local employment opportunities.</p> <p>The planning proposal seeks to amend TLEP 2014 to include "depots" as an APU (permitted with consent) on the subject land. Whilst the site is essentially being used for this purpose currently, such an amendment will enable Council to consider a Development Application related to the APU and therefore assist in the expansion of the current facility to meet the growing demands of the region and ensure the site complies with current standards and regulations. The proposal also notes that Solo Resource Recovery provide an essential waste management service for the local community.</p>
Community Strategic Plan (CSP)	The planning proposal is consistent with Goal 3.4 of the CSP: Support our local economy to thrive and generate sustainable economic opportunities to support our long-term future.



<p>Tweed River Estuary: Coastal Management Program 2022-2032 (CMP)</p>	<p>The subject land is captured under the Tweed River Estuary CMP. This plan has been certified by the Minister for the Environment.</p> <p>The Plan does not indicate any specific actions for the subject land other than rehabilitation of riparian vegetation along the Tweed River foreshore adjacent to the subject site (Figure 4).</p> <p>The planning proposal is considered not to be inconsistent with the CMP and is not expected to have any detrimental impact on the Tweed River as any site issues can be resolved appropriately at the development application stage.</p>  <p><b>Figure 4 - Tweed River estuary CMP on-ground actions - transition zone (source: Tweed River estuary CMP)</b></p>
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### 3.3 Section 9.1 Ministerial Directions

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

Table 4 9.1 Ministerial Direction assessment

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
4.1 Flooding	Justified	<p>The proposal is inconsistent with the direction as it will facilitate an additional use on flood prone land.</p> <p>This inconsistency is considered to be of minor significance (even though the site was affected by the 2017 and 2022 flood events) due to:</p> <ul style="list-style-type: none"> <li>the existing use of the site for over 70 years as a depot;</li> <li>The site has been operating under its current land use by the current owners since the 1940s. During this time, the</li> </ul>

		<p>impacts of riverine flooding have been managed satisfactorily;</p> <ul style="list-style-type: none"> <li>• given the nature of riverine flooding in the area there is typically sufficient warning time for action to be taken to move vehicles and equipment to higher ground onsite, or off site, as required based on the predicted flood peak;</li> <li>• the structures on site have been designed to be flood resilient and the impacts of riverine flooding has been manageable;</li> <li>• the type of flooding that occurs at the site has low flow velocity and slow water level rise. They therefore do not pose a significant safety hazard to those using the site; and</li> <li>• any new proposed buildings or structures would be at approximately the same level as the existing development and minimal filling will be required, hence there will be no impact on floodplain storage or flood levels.</li> </ul> <p>Nevertheless, it is recommended that consultation with the Department of Climate Change, Energy, the Environment and Water - Biodiversity and Conservation Services (Flooding) be undertaken to confirm the proposal is appropriate.</p>
4.5 Acid Sulfate Soils.	Justified	<p>The proposal is inconsistent with this direction as the land is identified as containing Class 3 ASS and is not supported by an acid sulfate soils study.</p> <p>The inconsistency is considered to be of minor significance as Tweed LEP 2014 contains suitable provisions (clause 7.1) to ensure that this matter can be appropriately considered and addressed as part of any future development application.</p>

### 3.4 State environmental planning policies (SEPPs)

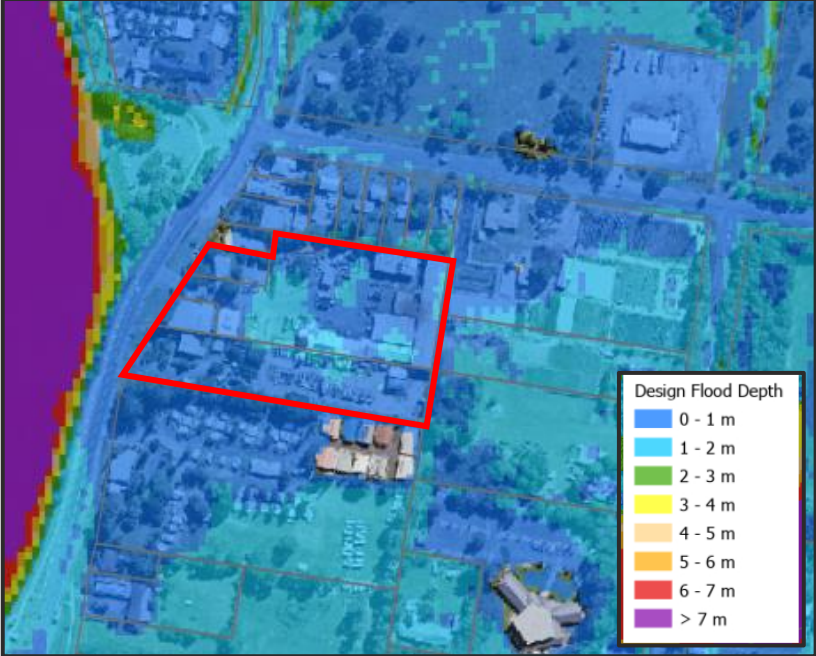
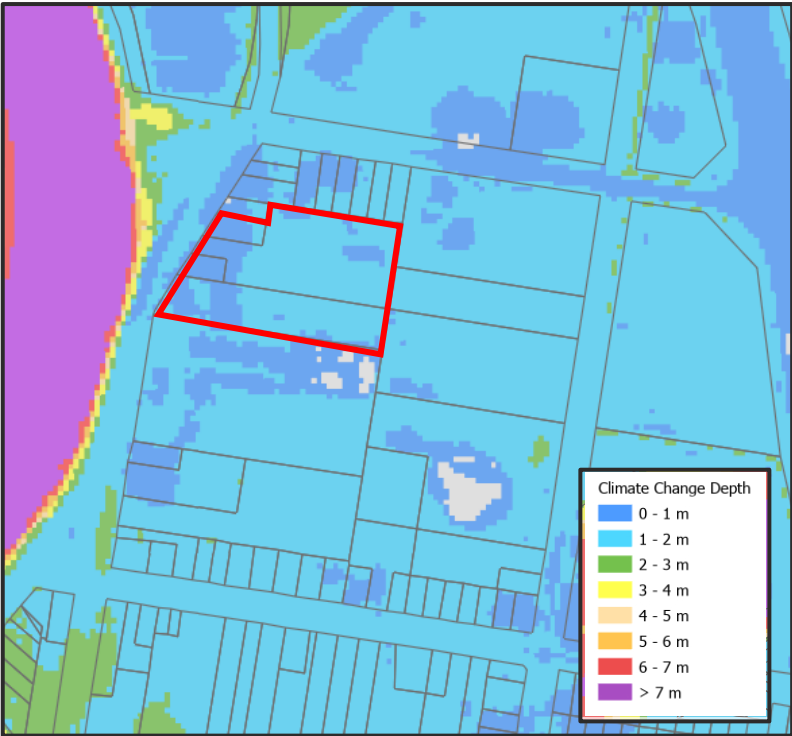
The planning proposal is consistent with all relevant SEPPs.

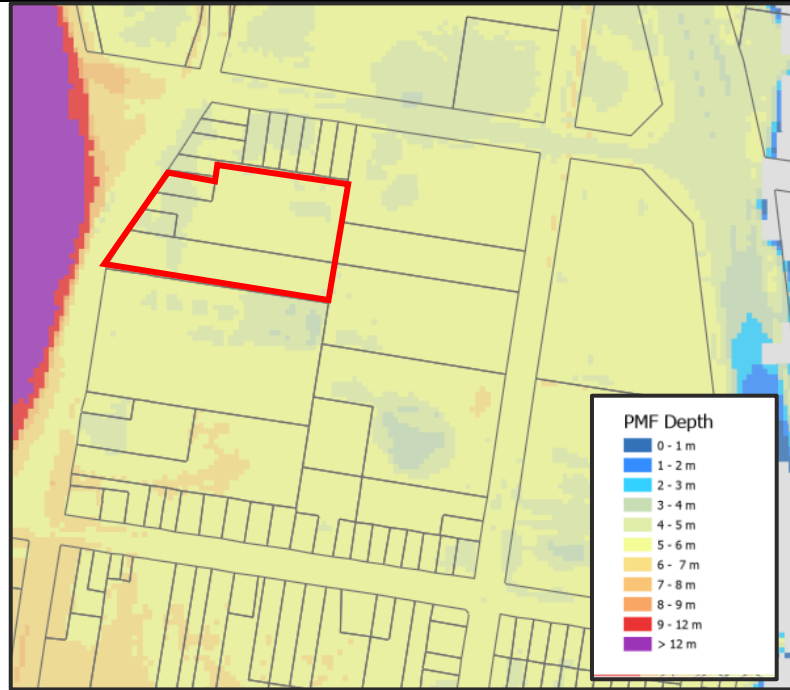
## 4 Site-specific assessment

### 4.1 Environmental

The proposal is not expected to impact any critical habitat or threatened species, populations or ecological communities or their habitats. Whilst the subject site is highly modified, consideration has been given to the following potential environmental impacts associated with the proposal.

Table 5 Environmental impact assessment

Environmental Impact	Assessment
<p>Flooding</p>	<p>The subject site is mapped as flood prone land (Figures 5, 6 &amp; 7).</p>  <p><b>Design Flood Depth</b></p> <ul style="list-style-type: none"> <li>0 - 1 m</li> <li>1 - 2 m</li> <li>2 - 3 m</li> <li>3 - 4 m</li> <li>4 - 5 m</li> <li>5 - 6 m</li> <li>6 - 7 m</li> <li>&gt; 7 m</li> </ul> <p><b>Figure 5 - Subject site showing Design Flood Depth (source: Tweed Shire Council Flood Mapping)</b></p>  <p><b>Climate Change Depth</b></p> <ul style="list-style-type: none"> <li>0 - 1 m</li> <li>1 - 2 m</li> <li>2 - 3 m</li> <li>3 - 4 m</li> <li>4 - 5 m</li> <li>5 - 6 m</li> <li>6 - 7 m</li> <li>&gt; 7 m</li> </ul> <p><b>Figure 6 - Subject site showing Climate Change Depth (source: Tweed Shire Council Flood Mapping)</b></p>



**Figure 7 - Subject site showing PMF Depth (source: Tweed Shire Council Flood Mapping)**

As discussed in Section 3.3 in relation to Ministerial Direction 4.1 Flooding, the site's location adjacent to the Tweed River is susceptible to flooding however given the nature of riverine flooding in the area, there is generally sufficient warning time to take action to move vehicles and equipment to higher ground onsite or off site.

Furthermore, the type of flooding that occurs at the site has low flow velocity and the floods that have occurred at the site have been a slow water level rise with minimal flow velocity and therefore do not pose a significant safety hazard to those using the site.

In relation to historical flood events in 2017 and 2022 some localised stormwater impacts occurred at the site prior to the arrival of the flood peak in the Tweed River. These impacts were localised to the site and were caused by stormwater inflows from the site and upstream stormwater catchment exceeding the capacity of the site's stormwater discharge pipe that discharges at the site's lawful point of discharge into the Council stormwater system on Chinderah Bay Drive. Part of the site upstream of this discharge pipe acts like a detention basin which provides some benefits to the local stormwater system on Chinderah Bay Dr by temporarily retaining stormwater within the site to reduce peak flows leaving the site.

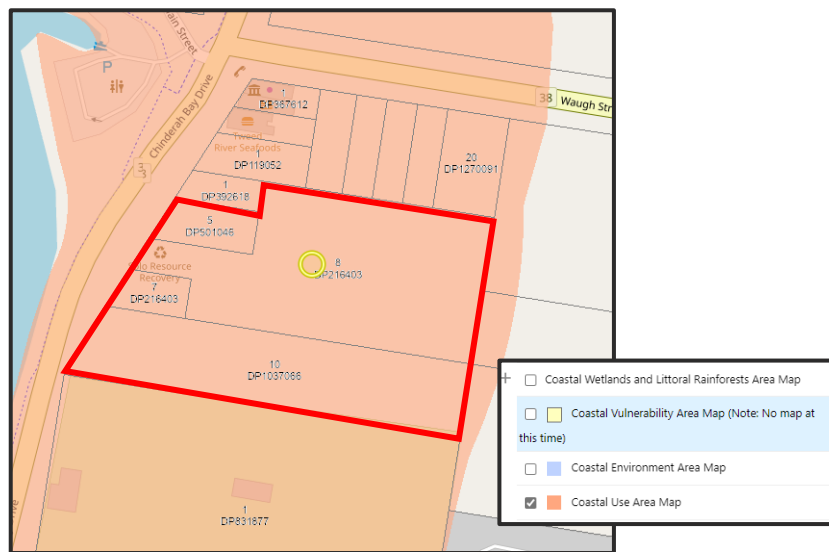
The assessment of historical flooding report states that based on the information presented and the authors knowledge of the site, that while the site is impacted by riverine flooding from time to time, the impacts have been and continue to be manageable and the site and land use does not pose a significant risk to safety or the environment.

<p>Coastal Management</p>	<p>The subject land is mapped as being within the sensitive coastal strip as defined by the NCRP 2041 and is mapped as 'Coastal Use Area' (Figure 8) and 'Coastal Environment Area' (Figure 9).</p> <p>It is not expected that the planning proposal will increase the likelihood or occurrence of environmental impact as it will not affect:</p>
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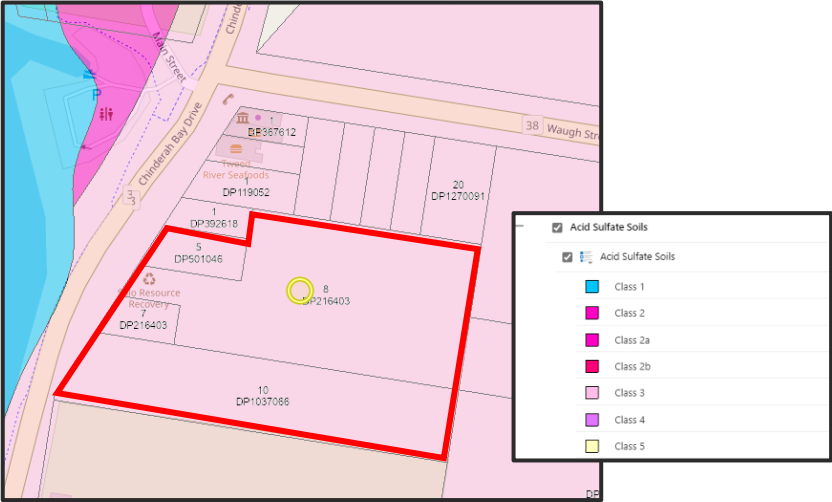
- the behaviour of the sea, or an arm of the sea, or any bay, inlet, lagoon, lake, body of water, river, stream or watercourse;
- any beach or dune or the bed, bank, shoreline, foreshore, margin or floodplain of the sea, or any bay, inlet, lagoon, lake, body of water, stream or watercourse;
- the landscape or scenic quality of the locality;
- any native vegetation.

The planning proposal is also considered to be consistent with the Coastal Design Guidelines (Attachment D).

Any potential impact of future development on the site related to its use as a depot, particularly impacts of climate change (including sea level rise), can be adequately considered at the development application stage in accordance with clause 27 of Tweed LEP 2014.



**Figure 8 - Subject site showing application of Coastal Use Area Map (source: NCRP 2041 Spatial Viewer)**

	 <p><b>Figure 9 - Subject site showing application of Coastal Environment Area map (source: NCRP 2041 Spatial Viewer)</b></p>
<p>Acid Sulfate soils</p>	<p>The subject site is mapped as containing Class 3 acid sulfate soils meaning that such soils are likely to be found 1 metre below the natural ground surface. It is noted that the site is also already filled to approximately 1.5m above natural ground level.</p> <p>While disturbance of these soils may occur in any future development on the site, TLEP 2014 contains suitable provisions (clause 7.1) to ensure that this matter can be appropriately addressed at the Development Application stage.</p>  <p><b>Figure 10 - Subject site showing application of Acid Sulfate Soils (Source: NCRP 2041 Spatial Viewer)</b></p>
<p>Contamination</p>	<p>The planning proposal is supported by a Preliminary Site Investigation (PSI) and Peer Review of available documentation relating to site contamination.</p> <p>Results for site investigation using bore holes was considered to indicate that:</p>



	<ul style="list-style-type: none"> <li>• broad scale contamination of the fill and natural in-situ soils has not occurred at the site;</li> <li>• broadscale issue of groundwater contamination is unlikely;</li> <li>• the site does not represent a significant risk to current land users; and</li> <li>• the site in its current state would be suitable for its ongoing use as a depot.</li> </ul> <p>It is considered that the planning proposal has appropriately addressed the issue of onsite contamination, particularly given that the land use it not proposed to change and that further detailed consideration of any issues can be appropriately dealt with at the development application stage.</p>
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## 4.2 Social and economic

The planning proposal is expected to have a positive economic impact as it will enable the existing facility to expand and continue to provide an essential waste management service to meet the growing needs and population base of the local community.

It is not anticipated that any detrimental social impacts will result from the proposal.

## 4.3 Infrastructure

The following table provides an assessment of the adequacy of infrastructure to service the site and the development resulting from the planning proposal and what infrastructure is proposed in support of the proposal.

**Table 6 Infrastructure assessment**

Infrastructure	Assessment
Local	The subject land is adequately serviced by roads, electricity, telecommunications, water and sewer infrastructure.
State	It is not anticipated that there will be any impact on State or regional infrastructure or the requirement for additional funding.

## 5 Consultation

### 5.1 Community

Council have not proposed a community consultation period. In line with the recommended exhibition time for a standard planning proposal, it is considered that a period of 20 days is a suitable public exhibition timeframe and forms part of the conditions of the Gateway determination.

### 5.2 Agencies

The proposal does not identify which agencies will be consulted.

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

- Department of Climate Change, Energy, the Environment and Water - Biodiversity and Conservation Services (flooding)



## 6 Timeframe

A 9-month timeframe, consistent with timeframes recommended by the LEP Plan Making Guidelines (August 2023) for standard planning proposal is recommended. A 9-month completion date is also in line with the Department's commitment to reduce processing times and with regard to benchmark timeframes. A condition to the above effect is recommended in the Gateway determination.

## 7 Local plan-making authority

Council has not requested delegation to be the Local Plan-Making authority.

Although the subject site is privately owned, the landowner operates a contracted service to Council from the site. Despite this, it is considered that as the planning proposal only deals with matters of local significance, that Council be authorised to be the local plan-making authority for this proposal.

## 8 Assessment summary

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

- It will enable expansion of an existing use that provides an essential service to meet demand generated by the ongoing population growth in the region.

## 9 Recommendation

It is recommended the delegate of the Secretary:

- Agree that any inconsistencies with section 9.1 Directions 4.1 Flooding and 4.5 Acid Sulfate Soils is minor or justified.

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:
  - clarify in Part 1 and 2 of the planning proposal, that an amendment to the Additional Permitted Uses map is proposed;
  - include a proposed Additional Permitted Uses map that clearly identifies the proposed additional permitted use on the subject land;
  - correct the error in Part 10 that states that the planning proposal seeks to allow two new land uses on the subject site;
  - discuss consistency of the proposal with section 9.1 Ministerial Direction 4.2 Coastal Management and include the completed Appendix 1 checklist from the NSW Coastal Design Guideline;
  - correct references to the B4 Mixed Use Zone to MU1 Mixed Use; and
  - update the timeframe to reflect the Gateway determination completion date.
2. Consultation is required with the Department of Climate Change, Energy, the Environment and Water - Biodiversity and Conservation Services (flooding).

- The planning proposal should be made available for community consultation for a minimum of 20 working days.

Given the nature of the planning proposal, it is recommended that the Gateway authorise council to be the local plan-making authority and that an LEP completion date 9 months from the Gateway determination date be included on the Gateway.



24/5/24

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

\_\_\_\_\_ (Date)

Craig Diss

Manager, Local Planning and Council Support



27/05/2024

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

\_\_\_\_\_ (Date)

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