

NORTHERN REGIONAL PLANNING PANEL

Panel Reference	PPSNTH-131
DA Number	DA21/08012
LGA	Tweed Shire
Proposed Development	<p>The application is a concept application for a proposed Agricultural Food Hub. The facility is intended to provide food preparation space within individual sheds for the Northern Rivers food production industry.</p> <p>The proposed development is expected to provide commercial kitchen facilities to support local producers in addition to other ancillary uses such as a transport terminal (for loading and unloading of goods for the site), cold storage, cafe and function space. These proposed uses will be an ancillary component for the Agricultural Food Hub and will be provided to service the needs of future employees and tenants.</p> <p>The application seeks concept approval for use of the site as an agricultural produce industry. The concept plans show building envelopes for 19 sheds with a total floor space of 53,930m². The concept plans show associated access, internal roads, 450 parking spaces, bio-retention basin and landscaping. Two acoustic walls with a minimum height of 3m are also proposed.</p> <p>No consent is sought for physical works with this concept application.</p>
Street Address	<p>931 Cudgera Creek Road, CUDGERA CREEK 2484 being Lot 403 in DP1001046 (part thereof)</p> <p>1023 Cudgera Creek Road CUDGERA CREEK 2484, being Lot 401 in DP1001046</p>
Applicant/Owner	<p>Applicant: Simon Forsyth and Lauren Manias / brisbane@mecone.com.au</p> <p>Owner: Mr Ian G Everingham & Ms Ann M Neill</p>
Date of DA lodgement	5 October 2021
Number of Submissions	403 public submissions
Recommendation	Refusal
Regional Development Criteria Schedule 6, Clause 2 of the SEPP (Planning Systems) 2021	<p>The application has a capital investment value greater than \$30 million and as such the proposal is regionally significant development as per Schedule 6, Clause 2 of the Planning Systems SEPP 2021.</p> <p>The Northern Regional Planning Panel is the consent authority in accordance with Section 4.5(b) of the <i>Environmental Planning and Assessment Act 1979</i>.</p>

List of All Relevant s4.15(1)(a) Matters	<ul style="list-style-type: none"> • Environmental Planning and Assessment Act, 1979 • Environmental Planning and Assessment Regulation 2021 • State Environmental Planning Policy (Resilience and Hazards) 2021 • State Environmental Planning Policy (Planning Systems) 2021 • State Environmental Planning Policy (Transport and Infrastructure) 2021 • State Environmental Planning Policy (Biodiversity and Conservation) 2021 • Tweed Local Environmental Plan 2014 • Tweed Development Control Plan 2008 <ul style="list-style-type: none"> - Section A2 – Site Access and Parking Code - Section A3 – Development of Flood Liable Land - Section A15 – Waste Minimisation and Management - Section A19 – Biodiversity and Habitat Management • Coastal Zone Management Plan for the Tweed Coast Estuaries
List all planning legislation requirements that the consent authority <u>must</u> consider	<ul style="list-style-type: none"> • Clause 4.6 of SEPP (Resilience and Hazards) 2021 • Clause 3.6 of SEPP (Biodiversity and Conservation) 2021 • Clause 2.119 of SEPP (Transport and Infrastructure) 2021 • Clause 2.122 of SEPP (Transport and Infrastructure) 2021 • Clause 2.3 (2) of the Tweed LEP 2014 • Clause 7.1(3) of the Tweed LEP 2014 • Clause 7.2(3) of the Tweed LEP 2014 • Clause 7.10 of the Tweed LEP 2014
List all documents submitted with this report for the Panel's consideration	<p>CONFIDENTIAL ITEM - Legal advice provided by Marsdens Law Group dated 4 July 2022</p> <p>Other documents:</p> <ul style="list-style-type: none"> • Concept development plans prepared by Twohill & James dated 29 June 2021 • Further information request issued to applicant dated 21 February 2022
Clause 4.6 requests	Nil
Report prepared by	Judith Evans - Planner
Report date	15 August 2022

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?

Yes

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?
e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Yes

Clause 4.6 Exceptions to development standards

Not applicable

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)?
Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

No

Conditions

Have draft conditions been provided to the applicant for comment?
Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

No

Assessment Report and Recommendation

FILE NO: DA21/0812

REPORT TITLE

Development Application DA21/0812 for a concept application for an agricultural food hub comprising of 19 industrial sheds, associated earth works and internal site roads (NRPP) at Lot 403 DP 1001046 being No. 1023 Cudgera Creek Road CUDGERA CREEK; and Lot 401 DP 1001046 being No. 931 Cudgera Creek Road CUDGERA CREEK

SUMMARY OF REPORT

Development Application DA21/0812 has been lodged as a concept application to seek consent for an Agricultural Food Hub. The concept development comprises of building envelopes for 19 sheds of various sizes with a total floor area of 53,930m² and associated internal access roads and parking. The application does not seek consent for any physical works.

The development has been characterised as an *agricultural produce industry* as defined in the Tweed Local Environmental Plan 2014 (TELP 2014) being:

agricultural produce industry means a building or place used for the handling, treating, processing or packing, for commercial purposes, of produce from agriculture (including dairy products, seeds, fruit, vegetables or other plant material), and includes wineries, flour mills, cotton seed oil plants, cotton gins, feed mills, cheese and butter factories, and juicing or canning plants, but does not include a livestock processing industry.

The application has not provided any specific details of future uses of the site stating that “it is anticipated that there will be a broad range of gourmet agricultural industries.” No further detail has been provided in the Statement of Environmental Effects (SEE) to substantiate that future intended uses of the site are properly characterised as an agricultural produce industry. The SEE states that the site is also intended to accommodate ancillary uses being commercial kitchen, cold storage, transport terminal, café and a function centre.

The applicant was requested to provide additional information regarding proposed future uses of the site and how these uses complied with the definition of an agricultural produce industry. The additional information provided by the applicant included information from several potential tenants interested in establishing operations at the proposed agricultural food hub site.

The information provided has not satisfactorily demonstrated that the future intended use of the site is properly characterised as an agricultural produce industry. From the information provided, it appears that the primary proposed future uses are food manufacturing activities. Food manufacturing would be characterised as an industrial activity being a general or light industry as defined by the TLEP 2014. General or light industries are not permissible in the rural zones in which the proposal is located.

The SEE states that the site is intended to accommodate ancillary uses including a commercial kitchen and function centre. Function centres are not permissible in the rural zones and the application does not provide adequate information to establish how these ancillary uses will operate in conjunction with the proposed agricultural produce industries.

Given that the applicant has not provided satisfactory information to confirm that the intended future uses of the site are properly characterised as an agricultural produce industry, the application has not demonstrated that the proposal is permissible on the site which is zoned RU1 Primary Production and RU2 Rural Landscape.

The proposed development is of a significant size. With a development foot print of approximately 11 hectares which includes sheds covering 5.39ha, the scale of the development resembles an industrial park. Given that multiple businesses are proposed to operate from the facility, the size and scale of the proposal is not considered to be consistent with the existing or desired rural character of the area. The application has not demonstrated that it is compliant with the objectives of the RU1 and RU2 zones in which it is located.

The application has not provided any details regarding water or wastewater service arrangements or potential impacts to Council's water and sewerage infrastructure. As such, the application fails to demonstrate compliance with clause 7.10 of TLEP 2014 which requires adequate essential services be provided for a development.

The concept application as submitted lacks insufficient information to determine the impacts of the proposal on the natural and built environment. As well as several requests to clarify the proposed uses of the site, a request for information (RFI) was issued to the applicant which requested information in relation to the following matters:

- **Infrastructure** - details of water and sewerage infrastructure connection and sewerage network capacity assessment;
- **Character and site suitability** – compliance with the objectives of the rural zones to maintain the rural character of the zone;
- **Traffic and road network impacts**– details of road upgrades among other matters;
- **Flooding and stormwater** – a flood impact assessment and stormwater management plan required;
- **Biodiversity** – assessment of impacts to waterways, fauna and flora as well as appropriate buffers to water ways to be provided to address Section A19 of the Tweed Development Control Plan 2008 (DCP); and
- **Operational matters** – clarification of types of uses required to properly assess amenity and noise impacts;
- **Economic justification** - economic feasibility study requested to establish a need for this scale of development as an agricultural food hub.

The applicant was provided 3 months to address the matters raised in the further information request. At 3 months the applicant provided a response to Item 1 of the RFI addressing the characterisation of the development. This response included a request for an additional 3 months to respond to the other outstanding matters. The balance of matters raised in RFI remain outstanding.

The matter of the characterisation and permissibility of the proposed uses is a threshold matter which must be satisfactorily addressed before the assessment of any impacts of the development. Given that the applicant has not been able to satisfactorily demonstrate that the future development will operate as an agricultural produce industry, it is considered appropriate to determine the application on the information submitted to date and not allow an extension RFI response time further prolonging the subsequent determination timeframe.

The application was nominated as Integrated Development under the Water Management Act and referred to the Natural Resources Access Regulator. The application was also referred to a number of other external agencies. Responses from each of the relevant agencies are provided below.

Agency	Response
Natural Resources Access Regulator under section 91 of the Water Management Act relating to a controlled activity	General Terms of Approval issued requiring a Controlled Activity approval be obtained for the development.
Roads and Maritime Service (TfNSW Development Services) under section 2.122 of SEPP (Transport and Infrastructure) 2021 relating to traffic generating development	A request for further information was issued. The response noted that the development has the potential to generate a significant uplift in traffic demand and that the submitted Traffic Impact Assessment was not a reliable, robust and complete assessment of the likely impacts of the proposal.
Rural Fire Service under s4.14 of the <i>EP&A Act</i>	Conditions were recommended relating to asset protection zones, construction standards, access, water and utility services and landscaping.

The application was advertised and notified to surrounding property owners with an extended submission period totalling 64 days. A total of 403 submissions were received with 400 of those noting objections to the proposal. The primary matters raised in the submissions related to the appropriateness of the site for the development, traffic and amenity impacts and characterisation of the development as a rural industry when it appears to be an industrial development. Significant concerns were also raised regarding potential impacts on flood behaviour and potential pollution of the nearby waterway.

There are a number of planning legislation requirements that the consent authority must consider. A detailed assessment of the relevant clauses is noted within the report however a summary is provided below.

- **Clause 4.6 of SEPP (Resilience and Hazards) 2021** – Clause 4.6 requires the consent authority to consider whether the land is contaminated. A preliminary site inspection was submitted which noted that no potential contaminants of concern were identified and that the site is suitable for the proposed use. The provisions of clause 4.6 have been satisfied.
- **Clause 3.6 of SEPP (Biodiversity and Conservation) 2021** - This clause requires Council to be satisfied as to whether or not the land is potential koala habitat. The application has not provided an assessment of koala habitat and as such the provisions of this clause have not been satisfied.

- **Clause 2.119 of SEPP (Transport and Infrastructure) 2021** – Consent must not be granted to development on land that has frontage to a classified road unless the consent authority is satisfied that the development will not interfere with the safe operation of the road or whether the development is sensitive to impacts from the adjacent classified road. No concerns are raised in this regard and the development is considered to be able to meet the provisions of this clause.
- **Clause 2.122 of SEPP (Transport and Infrastructure) 2021** – The application is identified as traffic generating development in Schedule 3. The consent authority must advise TfNSW of the application and must consider any submission made by TfNSW, the accessibility of the site, traffic safety and road congestion. TfNSW issued a request for additional information for which a response has not been received. The application contains insufficient information to determine compliance with the provisions of this clause.
- **Clause 2.3 (2) of the Tweed LEP 2014 - Zone objectives and Land Use Table**
The consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone. The application is not considered to comply with the objectives of the RU1 and RU2 zones.
- **Clause 7.1(3) of the Tweed LEP 2014 – Acid Sulfate Soils.** Consent must not be granted under this clause for the carrying out of works as specified in clause 7.1(2) unless an acid sulfate soils management plan has been prepared for the proposed works in accordance with the Acid Sulfate Soils Manual. This is a concept application with no works proposed. Assessment of this matter can be deferred to subsequent development consents for works should the concept application be approved.
- **Clause 7.2(3) of the Tweed LEP 2014 – Earthworks.** This clause requires the consent authority to consider effects and potential impacts on the site and surrounding locality as a result of the proposed earthworks. The application does not contain sufficient information to assess the impacts of proposed earthworks (fill) on the drainage patterns of the land and any potential flooding impacts of the proposal. The provisions of this clause have not been satisfactorily addressed.
- **Clause 7.10 of the Tweed LEP 2014 – Essential Services.** Clause 7.10 requires the consent authority to consider the adequate provision of essential services for the proposed development. The application does not address the provision of water or sewerage management for the proposal. Insufficient information has been provided to determine that the vehicular access is suitable. The provisions of this clause have not been satisfactorily addressed.

RECOMMENDATION

The application is recommended for refusal for the following reasons:

1. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act* the application has not demonstrated compliance with the Tweed Local Environment Plan 2014. Specifically the following clauses:
 - i. Clause 1.2 Aims of the plan – The proposal is not considered to meet the aims of the plan in that:
 - (a) The application fails to demonstrate that it meets the principles of ecologically sustainable development in accordance with clause 1.2(2)(d);
 - (b) The application fails to demonstrate that it conserves the biological diversity, scenic quality and ecological integrity of the Tweed in accordance with clause of the 1.2(2)(g);
 - (c) The application fails to demonstrate that it has considered the protection of koalas and koala habitat in accordance with 1.2(2)(j).
 - ii. Clause 2.3 Zone objectives and land use table – the application has not demonstrated that the intended future use of the site is properly characterised as an agricultural produce industry. Consequently the application has not demonstrated that the future proposed use of the site is a permissible use in accordance with the land use tables for the RU1 and RU2 zones.
 - iii. Clause 7.2 Earthworks – The application has not provided sufficient information to determine the impacts of any fill on the drainage patterns of the land.
 - iv. Clause 7.10 Essential services – The application has not demonstrated that water and sewerage management services are able to be provided for the development or that the vehicular access is suitable.
2. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act* the application has not demonstrated compliance with clause 3.6 of the SEPP (Biodiversity and Conservation) 2021. The application has not provided an assessment to determine if the site supports potential koala habitat.
3. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act* the proposal has not demonstrated compliance with clause 2.122 of SEPP (Transport and Infrastructure) 2021. The application has not provided sufficient information to determine that the development is suitable for the site with regard to accessibility of the site appropriate for the development.
4. Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act* the application has not demonstrated compliance with the Tweed Development Control Plan 2008. Specifically the following sections:
 - i. Section A2 – Site Access and Parking Code. The application has not demonstrated that suitable access is provided for the proposal with regard to traffic volumes, maximum vehicle sizes and internal site configuration.

- ii. Section A3 – Development of Flood Liable Land. The application contains insufficient information to determine the potential impact of the proposal on the flood behaviour of the land.
 - iii. Section A19 – Biodiversity and Habitat Management. The application has not provided adequate information to determine the impact of the proposal on fauna, flora or environmentally sensitive areas.
5. Pursuant to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act* the application contains insufficient information to determine the likely impacts of the proposal on the natural and built environment. The development represents an intensive use of the site that is not consistent with the existing rural uses. Insufficient information is provided regarding the impacts of the future built form on the physical environment. Additionally, insufficient information has been provided on the future uses of the site to determine if the cumulative impacts of the development is reasonable given the rural location.
 6. Pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act* the proposal is not considered to be suitable for the site. The size and scale of the development is not considered to be consistent with the character of the rural area.
 7. Pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act* the proposal is not considered to be in the public interest for the following reasons:
 - i. The information provided by the applicant has not demonstrated that future uses of the site are permissible within the RU1 and RU2 zones;
 - ii. The concept application does not include details of future uses of the site and as such, it is not possible to properly assess all the potential impacts from these uses or if these impacts are considered reasonable with respect to the rural location;
 - iii. The size and scale of the proposed development is not considered to be consistent with the rural character of the area;
 - iv. The application has not included sufficient information to assess the impact of the development on Council's water and wastewater infrastructure.

REPORT

Applicant: Mecone
Owner: Mr Ian G Everingham & Ms Ann M Neill
Location: Lot 403 and Lot 401 DP 1001046; No. 931 and 1023 Cudgera Creek Road CUDGERA CREEK;
Zoning: RU1 - Primary Production RU2 - Rural Landscape
CIV: \$72,234,737.00

PROPOSAL

Development Application DA21/0812 seeks concept approval for the development of an Agricultural Food Hub. The concept application proposes the following:

- Building envelopes for 19 sheds varying in size from 800m² to 5,000m² with a total combined floor area of 53,930m²;
- Ancillary uses including a transport terminal, cold storage, commercial kitchen, function centre and café;
- Three new driveway crossovers;
- Internal road network and associated parking for 450 vehicles;
- Bio-retention basin;
- Two acoustic walls – one wall is approximately 185m long with a minimum height of 3m and the other is approximately 210m long with a minimum height of 2m;
- Landscaping to create a 10m wide landscape buffer along some sections of the boundary.

Although not detailed in the application, the proposal will require demolition of an existing shed, earthworks and vegetation removal to facilitate the future use of the site.

The application is seeking concept approval only with no approval for physical works sought. The Statement of Environmental Effects (SEE), amended version dated May 2022, states that subsequent development applications will be lodged to seek approval for site preparation works and construction the sheds, including fit out, over several stages.

The application documentation provides the following information regarding the intent for the future use of the proposed Agricultural Food Hub:

“The proposal seeks to redevelop the site as an Agricultural Food Hub where local and regional agricultural produce can be prepared and presented to food purchasers (from overseas and locally).”

“the proposal consists of 53,930sqm of food preparation space for the Northern Rivers food production industry.”

“The development will satisfy the increasing demands for additional floor space for handling, treating, processing and warehousing of local agricultural products for the next 10 years as well as accommodate staff parking and to better manage distribution. The Agricultural Food Hub will create an opportunity where local and regional agricultural produce can be prepared and presented to food purchasers (from overseas and domestically).”

The proposed development is expected to provide commercial kitchen facilities to support local producers in addition to other ancillary uses such as transport terminal (for loading and unloading of goods for the site), cold storage, cafe and function space. These uses will be an ancillary component for the Agricultural Food Hub and will be provided to service the needs of future employees and tenants.”

The application characterises the proposed use of the site as an agricultural produce industry which is a type of rural industry and is permissible in the RU1 Primary Production and RU2 Rural Landscape zones under Tweed Local Environment Plan 2014 (TLEP 2014).

agricultural produce industry means a building or place used for the handling, treating, processing or packing, for commercial purposes, of produce from agriculture (including dairy products, seeds, fruit, vegetables or other plant material), and includes wineries, flour mills, cotton seed oil plants, cotton gins, feed mills, cheese and butter factories, and juicing or canning plants, but does not include a livestock processing industry.

Note—Agricultural produce industries are a type of **rural industry**—see the definition of that term in this Dictionary.

rural industry means the handling, treating, production, processing, storage or packing of animal or plant agricultural products for commercial purposes, and includes any of the following—

- (a) agricultural produce industries,
- (b) livestock processing industries,
- (c) composting facilities and works (including the production of mushroom substrate),
- (d) sawmill or log processing works,
- (e) stock and sale yards,
- (f) the regular servicing or repairing of plant or equipment used for the purposes of a rural enterprise.

Note—Rural industries are not a type of **industry**—see the definition of that term in this Dictionary.

The application has been accompanied by the following reports:

- Statement of Environmental Effects (amended May 2022);
- Tweed Local Environment Plan 2014 compliance assessment;
- Tweed Development Control Plan 2008 compliance assessment;
- Preliminary site investigation (contamination);
- Preliminary ecological assessment;
- Traffic assessment;
- Visual impact assessment;
- Acoustic report;
- Engineering report;
- Habitat management plan;
- Bush fire assessment report.

The site

The application proposes to develop Lot 401 and part Lot 403 in DP 1001046. Lot 403 straddles the Pacific Motorway. No development is proposed on the portion of Lot 403 east of the Pacific Motorway.

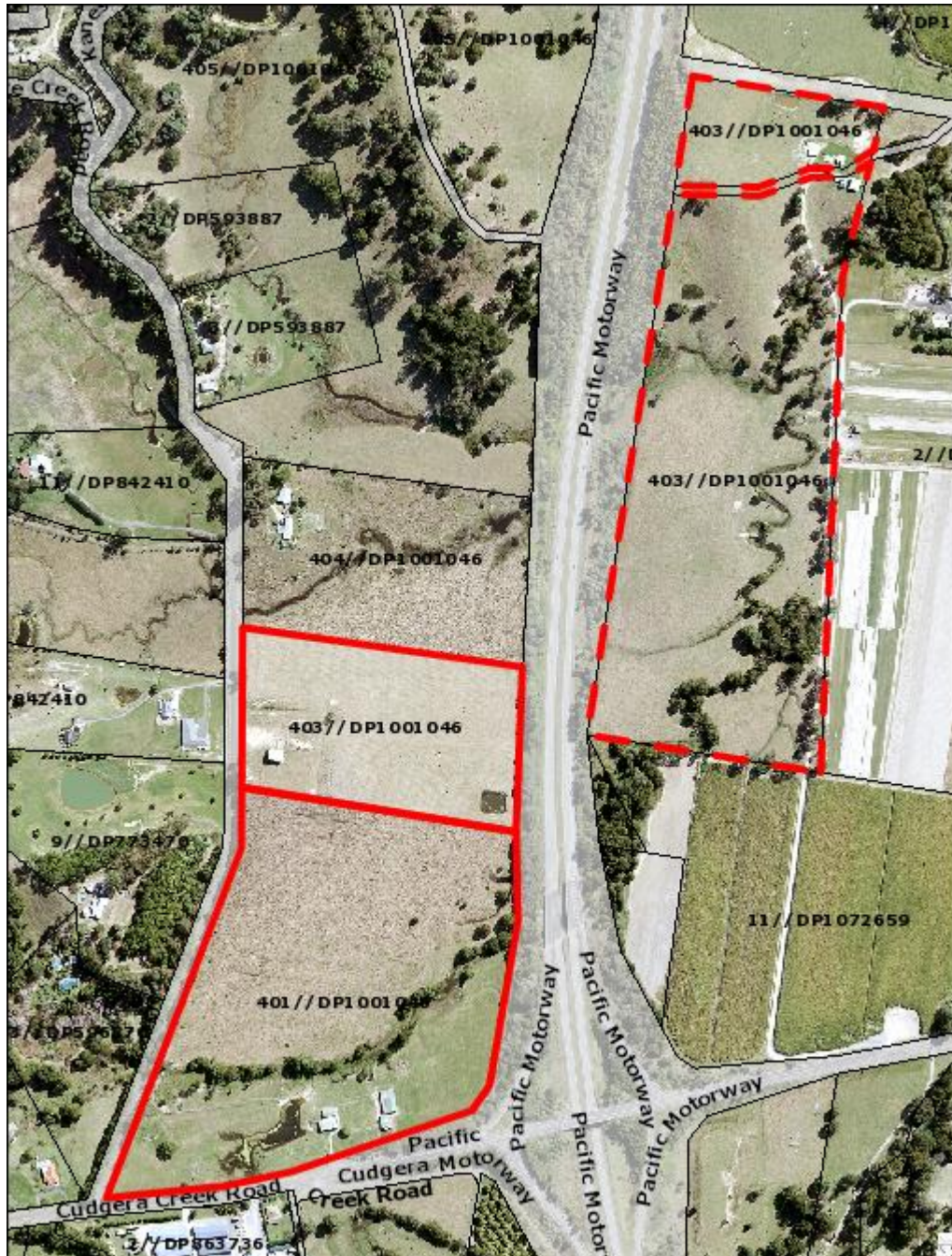


Figure 1 Lot 401 and 403 in DP10111046. No development proposed on eastern portion of Lot 403.

The development site area is 200,785m² (excluding the eastern portion of Lot 403). The site is generally flat in topography sloping towards the southeast.

Lot 401 contains a rural residential dwelling and farm sheds which are accessible from Cudgera Creek Road. The site appears to be used as grazing land and has been

historically cleared of native vegetation prior to 1962. A shed and small farm dam is located on the western portion of Lot 403.

A Third Order stream is located on the southern portion of Lot 401 and separates the residential development from the northern portion of Lot 401 which is to be developed. A Third Order stream is located adjacent to the northern boundary of Lot 403.

The site is mapped as bushfire prone land (Category 2 and Vegetation Buffer) with the primary bushfire threat from vegetation along the boundary with the Pacific Motorway.

The site is mapped as possibly containing acid sulfate soils class 5 and as being flood prone. Relevant flooding metrics for the site are provided below:

- The site is affected by the Probable Maximum Flood (PMF) level which varies across the site from 10.2m AHD to approximately 12m AHD (approximately 1.2m to 3.5m deep);
- The 100 year Average Recurrence Interval (ARI) (1% AEP) varies from 7.5m AHD (approximately 600mm depth) in the northern portion of the site to 12.9m AHD at the southern end of the site (approximately 700mm depth);
- The climate change flood mapping slightly increases the 100 year ARI;
- High Flood Hazard area is identified on the site along the eastern and southern boundary.

The site is not connected to reticulated water or sewerage infrastructure.

There are no recent development approvals relevant to the subject application over Lot 401. A two lot subdivision was approved for Lot 403 in 2018. This subdivision approved the creation of two new lots which mimic the current arrangement of current Lot 403 in that one of the new approved lots sits to the west of the Pacific Motor way and the other new lot is located entirely to the east of the Pacific Motorway.

Application history

The development application was lodged with Council on 5 October 2021. A chronology of the development application is outlined in the table below.

Date	Event
15 December 2020	Pre-DA lodgement meeting with Tweed Shire Council
18 March 2021	Initial lodgement of application to the Planning Portal
31 March to 29 September 2021	Multiple correspondence between applicant and Council to ensure information is correct to enable lodgement of application
5 October 2021	Formal lodgement of application with Council
12 October 2021	Exhibition of Application to Adjoining Owners
13 October 2021	Referral to Internal Departments and External Agencies
3 November 2021	Re-exhibition of Application to Adjoining Owners

15 December 2021	Close of submission period
19 January 2022	Panel briefing
21 February 2022	Further information request which included advice to withdraw the application
10 March 2022	Meeting with applicant to discuss information request
21 March 2022	Email to applicant to provide further clarification on definition of agricultural produce industry
24 May 2022	Submission of partial response to the information request including an amended SEE and a request for an additional 3 months to respond to the remaining outstanding matters
25 May 2022	Email to applicant requesting additional comment on how the proposal complies with the definition of agricultural produce industry
31 May 2022	Council seeks legal advice regarding the agricultural produce industry proposal
4 July 2022	Legal advice received.
5 August 2022	Additional partial response to information request

A comprehensive 16 page further information request (RFI) was issued to the applicant on 21 February 2022. Item 1 of the RFI queried the proposed future uses of the site. The RFI provided advice on characterisation of an agricultural produce industry and noted that:

“An ‘agricultural produce industry’ is considered to be the first step in the production process for raw, unprocessed produce from a farm.”

The RFI noted that the SEE (as originally submitted dated September 2021) referred to the proposal as being a “*manufacturing space*” for the “*manufacturing, processing and warehousing of local agricultural products*”. The applicant was advised that manufacturing is considered to be inconsistent with the definition of an agricultural produce industry. The definitions within the TLEP 2014 include ‘manufacturing’ as being associated with an industrial activity related to general or light industries. General or light industries are not permitted within the RU1 and RU2 zones which apply to the site.

In response to the query regarding characterisation of the future uses of the site, the applicant has submitted an amended SEE (dated May 2022) to remove the term ‘manufacturing’.

In addition to the query regarding characterisation and permissibility of the proposed uses of the site, the RFI requested additional detail in relation to the following matters:

- **Infrastructure** - details of water and sewerage infrastructure connection and sewerage network capacity assessment;
- **Character and site suitability** – compliance with the objectives of the rural zones to maintain the rural character of the zone;

- **Traffic and road network impacts**— details of road upgrades among other matters;
- **Flooding and stormwater** – a flood impact assessment and stormwater management plan required;
- **Biodiversity** – assessment of impacts to waterways, fauna and flora as well as appropriate to buffers to water ways to be provided;
- **Operational matters** – clarification of types of uses required to properly assess amenity and noise impacts;
- **Economic justification** - economic feasibility study requested to establish a need for this scale of development as an agricultural food hub.

Noting the large number of items that needed to be addressed, the RFI advised that the application should be withdrawn. A new application could be lodged once all the outstanding matters were addressed.

Characterisation of the proposal was the subject of additional meetings and correspondence between the applicant and assessment officers following the issue of the RFI.

The applicant provided a partial response to the RFI on 24 May 2022 which specifically addressed Item 1 of the RFI which queried the permissibility of the proposal. The response included the following statement regarding the definition of an agricultural produce industry:

“There is no element of the definition that requires or anticipates that an agricultural produce industry is the first step in the production process for raw, unprocessed produce from a farm. There is also no element of the definition that excludes the manufacturing of food products.

*Rather, the definition anticipates that an agricultural produce industry is for the **handling, treating, processing, or packing for commercial purposes of produce from agriculture**. The examples provided in the definition clarify that handling, treating, processing and packing involves a level of refinement to a finalised product and includes examples of food manufacturing (e.g. wineries, cheese and butter factories, and juicing or canning plants).”*

The applicant also provided in their response examples from the production process of three companies interested in establishing their operations at the proposed agricultural food hub.

Characterisation of agricultural produce industry

An *agricultural produce industry* is defined in the Tweed Local Environmental Plan 2014 (TELP 2014) as (emphasis added):

agricultural produce industry means a building or place used for the handling, treating, processing or packing, for commercial purposes, of produce from agriculture (including dairy products, seeds, fruit, vegetables or other plant material), and includes wineries, flour mills, cotton seed oil plants, cotton gins, feed

mills, cheese and butter factories, and juicing or canning plants, but does not include a livestock processing industry.

As the definition states, an agricultural produce industry is a place for processing produce from agriculture. Agriculture is defined in the TLEP 2014 as being:

agriculture means any of the following—

- (a) aquaculture,
- (b) extensive agriculture,
- (c) intensive livestock agriculture,
- (d) intensive plant agriculture.

aquaculture has the same meaning as in the Fisheries Management Act 1994. It includes oyster aquaculture, pond-based aquaculture and tank-based aquaculture.

extensive agriculture means any of the following—

- (a) the production of crops or fodder (including irrigated pasture and fodder crops) for commercial purposes,
- (b) the grazing of livestock (other than pigs and poultry) for commercial purposes on living grasses and other plants on the land as their primary source of dietary requirements, and any supplementary or emergency feeding, or temporary agistment or housing for weaning, dipping, tagging or similar husbandry purposes, of the livestock,
- (c) bee keeping,
- (d) a dairy (pasture-based) where the animals generally feed by grazing on living grasses and other plants on the land as their primary source of dietary requirements, and any supplementary or emergency feeding, or temporary agistment or housing for weaning, dipping, tagging or similar husbandry purposes, of the animals.

intensive livestock agriculture means the keeping or breeding, for commercial purposes, of cattle, poultry, pigs, goats, horses, sheep or other livestock, and includes any of the following—

- (a) dairies (restricted),
- (b) feedlots,
- (c) pig farms,
- (d) poultry farms,

intensive plant agriculture means any of the following—

- (a) the cultivation of irrigated crops for commercial purposes (other than irrigated pasture or fodder crops),
- (b) horticulture,
- (c) turf farming,
- (d) viticulture.

As indicated by the definition, notably the term “*produce from agriculture*”, an agricultural produce industry is considered to relate to a specific range of activities associated with the initial processing of crops or dairy products. Agricultural produce industries are only permissible in the rural zones indicating that they are intended to support the primary production of the land. Agricultural produce industries receive crops or dairy products direct from a farm for initial handling and processing.

The examples provided in the TLEP 2014 definition of an agricultural produce industry are facilities in which the agricultural product is processed but not manufactured into another product. To simplify, wine is a product from grapes, cheese is a product from milk, flour is produced from grain, juice is produced from fruit. The definition indicates that items produced by an agricultural produce industry are not transformed or manufactured into another product. The definition does not include examples of facilities that manufacture the products from farming into another product. For example, a flour mill processes grain into flour - it does not produce bread.

Activities that involve the manufacture of products are included in alternate definitions within the TLEP 2014 being an industrial activity (emphasis added):

industrial activity means the manufacturing, production, assembling, altering, formulating, repairing, renovating, ornamenting, finishing, cleaning, washing, dismantling, transforming, processing, recycling, adapting or servicing of, or the research and development of, any goods, substances, food, products or articles for commercial purposes, and includes any storage or transportation associated with any such activity.

The general term industrial activity noted above is referenced in the definitions relating to industry, light industry and general industry.

industry means any of the following—

- (a) general industry,
 - (b) heavy industry,
 - (c) light industry,
- but does not include—
- (d) rural industry, or
 - (e) extractive industry, or
 - (f) mining.

general industry means a building or place (other than a heavy industry or light industry) that is used to carry out an industrial activity.

heavy industry means a building or place used to carry out an industrial activity that requires separation from other development because of the nature of the processes involved, or the materials used, stored or produced, and includes—

- (a) hazardous industry, or
- (b) offensive industry.

It may also involve the use of a hazardous storage establishment or offensive storage establishment.

light industry means a building or place used to carry out an industrial activity that does not interfere with the amenity of the neighbourhood by reason of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, or otherwise, and includes any of the following—

- (a) high technology industry,
- (b) home industry,
- (c) artisan food and drink industry,
- (d) creative industry.

It is noted that rural industries are specifically excluded from the definition of *industry*. Additionally, the term *industrial activity* is excluded from the definition of a *rural industry* or an *agricultural produce industry*.

rural industry means the handling, treating, production, processing, storage or packing of animal or plant agricultural products for commercial purposes, and includes any of the following—

- (a) agricultural produce industries,
- (b) livestock processing industries,
- (c) composting facilities and works (including the production of mushroom substrate),
- (d) sawmill or log processing works,
- (e) stock and sale yards,
- (f) the regular servicing or repairing of plant or equipment used for the purposes of a rural enterprise.

Note—Rural industries are not a type of industry

To summarise, rural industries and agricultural produce industries undertake the *handling, treating, production, processing, storage or packing of produce from agriculture*. The definitions specifically omit reference industrial activities associated with the manufacture of other “*goods, substances, food, products or articles...*”

Any premises that receives agricultural products that have been previously treated, processed or altered in some way (e.g. nuts have been shelled and sorted) for use in an “industrial activity” (e.g. the manufacture of a new different product such as muesli), is not considered to be an agricultural produce industry.

Information provided by the applicant indicates that the applicant has a differing interpretation of the activities permitted to be undertaken by an agricultural produce industry. The applicant does not agree that an agricultural produce industry only receives products that have not been previously processed or that an agricultural produce industry is the initial or first step in processing produce from a farm. The applicant also contends that manufacturing of food products (for final consumption) is not excluded from the definition of an agricultural produce industry.

The applicant provided sample processing flow charts from three companies interested in establishing operations at the proposed agricultural food hub. The flow charts were submitted to support the assertion that the proposed agricultural food hub will accommodate rural producers who handle, treat, process and package produce from agriculture for wholesale purposes.

Two of the flow charts were provided by companies that operate macadamia nut farms. These companies produce a variety of products from the nuts they produce.

Of the three sample flow charts provided, one nut grower showed the process from harvesting nuts to packaging nuts. The process included drying, grading, cracking, removing shells, sorting then packaging. From the limited information provided, this process would seem consistent with an agriculture produce industry.

This particular flow chart also included a value added option with an additional flow chart for the addition of oils, honey, spices and roasting. This additional value adding

processing is considered to be a food manufacturing process rather than an activity that would be associated with an agricultural produce industry.

Another of the flow charts provided by a nut growing business that makes muesli, listed only 'raw materials' and 'ingredients' at the beginning of the production process. The first step in the flow charts was 'blend' and included the additional of other ingredients (e.g. fruit). These flow charts appear to indicate that the initial input into the process has previously been processed to some degree. The flow chart did not include any activities associated with the initial processing of the agricultural product such as cleaning or sorting. The company's web site shows that the products produced may contain up to 17 different ingredients. No information has been provided to confirm that this particular company is a producer of any additional agricultural products.

Another of the flow charts stated that it received fish roe from a local fish processing plant. A fish processing plant could be considered to be an agricultural produce industry. However a facility that receives processed fish products is for further processing not into products for consumption is not considered to be an agricultural produce industry.

Each of the flow charts would appear to indicate that a primary purpose of the each of the companies are that of food manufacturing rather than the specific purposes of undertaking the initial processing of agricultural produce (products direct from a farm).

Concept approval and ancillary uses

The applicant argues that as approval is sought for a concept approval, any consideration of whether any future tenant complies with the definition of an agricultural produce industry is a matter for consideration in subsequent detailed development applications.

Approval of a concept application of this size and scale without certainty regarding future uses, noting there is a clear disparity with applicant's interpretation of the definition of an agricultural produce industry, results in the risk of facilitating prohibited uses. The proposed development resembles an industrial park which is likely to attract future applications for industrial uses. Industries other than rural industries are prohibited in the rural zones applicable to the site.

The assessment of any concept application requires the assessment of the likely impacts of the concept proposal under section 4.15 of the *Environmental Planning and Assessment Act 1979* as specified in section 4.22(5).

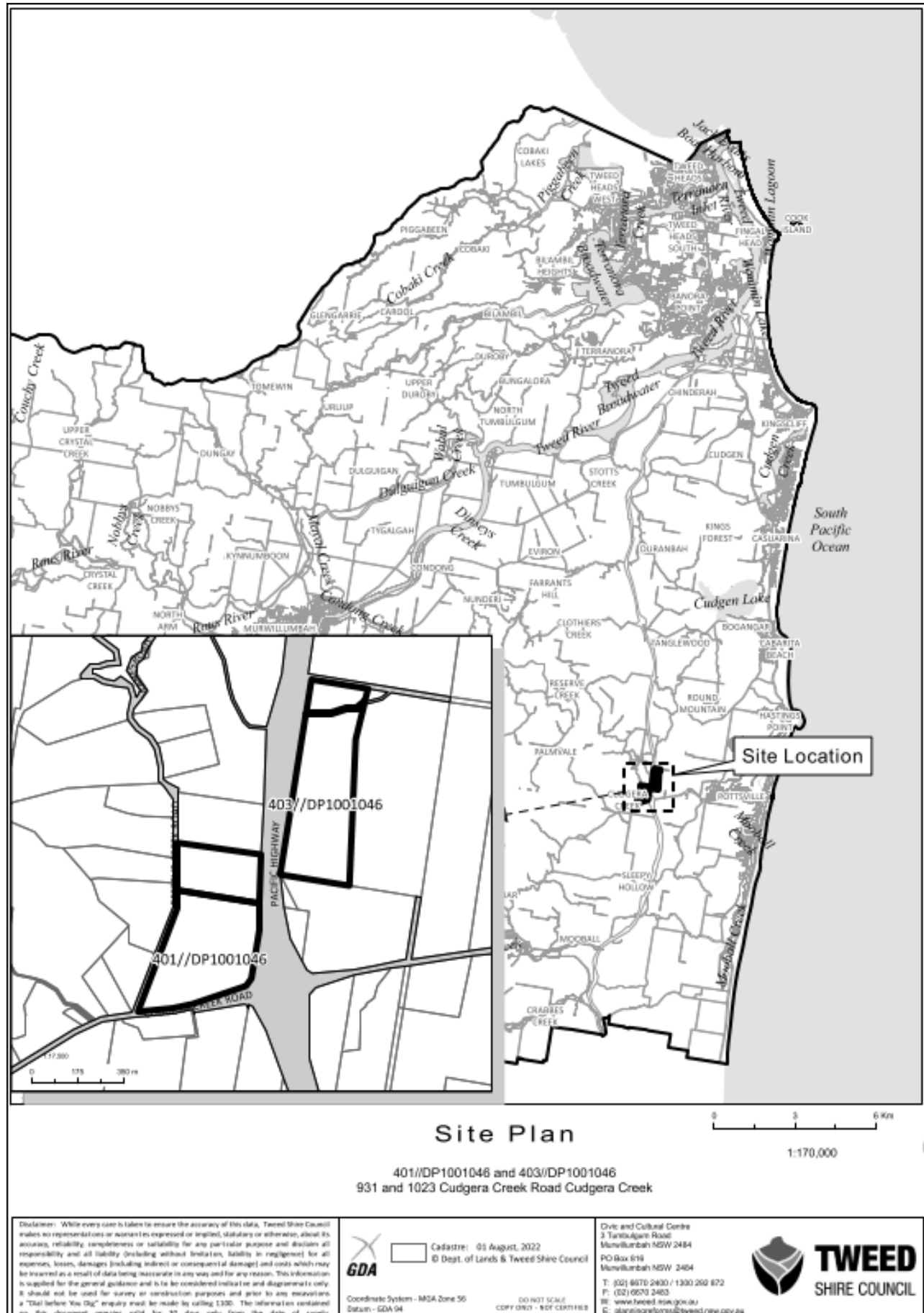
The proposal includes 19 sheds which could potentially accommodate 19 or more individual agricultural produce industries. It is not possible to assess the cumulative impacts (including noise, waste, odour) of multiple agricultural produce industries when the uses of each shed could vary significantly.

The proposal includes ancillary uses being a commercial kitchen, function centre and café. Function centres are not permissible in the rural zone whilst cafes are permissible in the RU2 zone.

The application has not provided any details regarding floor area of the proposed function centre and commercial kitchen or details of how they will be used in conjunction with the agricultural produce industries. As details have not been provided to establish

the function centre is an ancillary use, it is not possible to provide concept approval for these uses.

LOCALITY PLAN



LEP ZONING MAP

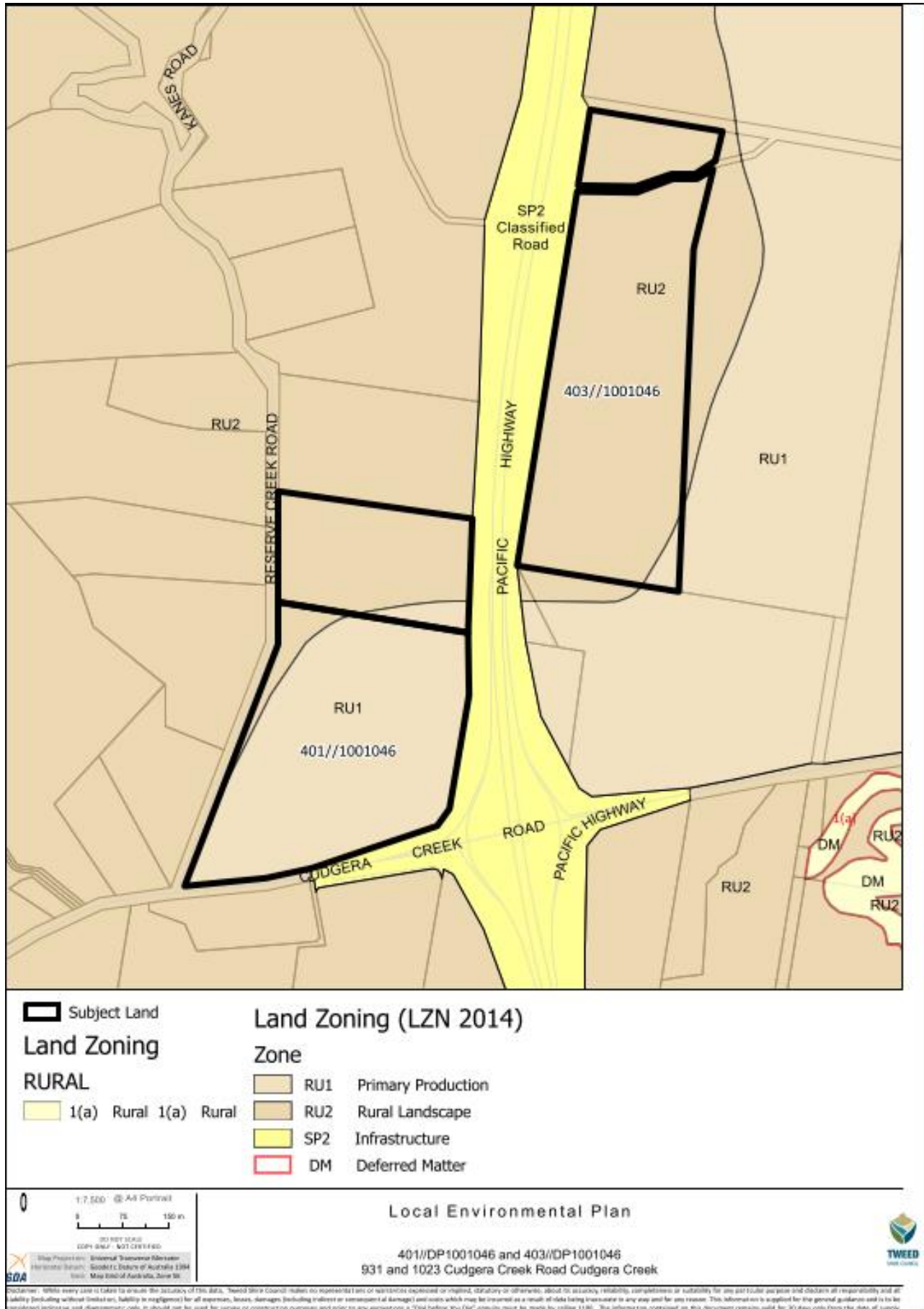


Figure 2 Development is limited to Lot 401 and the western portion of Lot 403

AERIAL IMAGERY



Figure 3 Development is limited to Lot 401 and the western portion of Lot 403

DEVELOPMENT PLANS



CONSIDERATIONS UNDER SECTION 4.15 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

(a) (i) The provisions of any environmental planning instrument

Tweed Local Environmental Plan 2014

Clause 1.2 - Aims of the Plan

The particular aims of the plan are as follows:

- (aa) *to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,*
- (a) *to give effect to the desired outcomes, strategic principles, policies and actions contained in the Council's adopted strategic planning documents, including, but not limited to, consistency with local indigenous cultural values, and the national and international significance of the Tweed Caldera,*
- (b) *to encourage a sustainable local economy and small business, employment, agriculture, affordable housing, recreational, arts, social, cultural, tourism and sustainable industry opportunities appropriate to Tweed,*
- (c) *to promote the responsible sustainable management and conservation of Tweed's natural and environmentally sensitive areas and waterways, visual amenity and scenic routes, built environment, and cultural heritage,*
- (d) *to promote development that is consistent with the principles of ecologically sustainable development and to implement appropriate action on climate change,*
- (e) *to promote building design which considers food security, water conservation, energy efficiency and waste reduction,*
- (f) *to promote the sustainable use of natural resources and facilitate the transition from fossil fuels to renewable energy,*
- (g) *to conserve or enhance the biological diversity, scenic quality and geological and ecological integrity of Tweed,*
- (h) *to promote the management and appropriate use of land that is contiguous to or interdependent on land declared a World Heritage site under the Convention Concerning the Protection of World Cultural and Natural Heritage, and to protect or enhance the environmental significance of that land,*
- (i) *to conserve or enhance areas of defined high ecological value,*
- (j) *to provide special protection and suitable habitat for the recovery of the Tweed coastal Koala.*

The application for the concept proposal has not provided sufficient information to enable a full assessment of the impacts of the proposal on the natural and built environment. Specifically the application does not demonstrate that the development complies with the following:

- The proposal has not demonstrated that is consistent with the aims of the plan and adopted strategic documents including the Local Strategic Planning Statement 2020 (LSPS). Planning Priority 10 of the LSPS aims to ensure the productive agricultural land is protected whilst creating diverse economic opportunities. Whilst the concept of an agricultural

food hub has its merits in promoting and supporting economic diversity and boutique industries, the size and scale of the proposed development is not considered to be appropriate for the location. The proposal does not comply with Priority 10.1 in that it is not considered to be an appropriately scaled and sensitive rural business suitable for location on regionally significant farmland.

- The application fails to demonstrate that it meets the principles of ecologically sustainable development (ESD) in accordance with clause 1.2(2)(d). The principles of ESD include principles relating to sustainable use, conservation of biological diversity and internalisation of external environmental costs. The proposal will consume approximately 11ha of regionally significant farm land which has not been addressed by the application. Insufficient information has not been submitted to properly assess the effects of the proposal on fauna, flora or sensitive environments. The application has not provided sufficient information to identify or address environmental impacts of the application (environmental costs).
- The application fails to demonstrate that it conserves the biological diversity, scenic quality and ecological integrity of the Tweed in accordance with clause of the 1.2(2)(g). As mentioned above, insufficient information has not been submitted to properly assess the effects of the proposal on fauna, flora or sensitive environments (waterways).
- The application fails to demonstrate that it has considered the protection of koalas and koala habitat in accordance with 1.2(2)(j). The application does not contain an assessment of the potential impact of the proposal on koalas by failing to determine if the site supports potential koala habitat.

Clause 2.3 – Zone objectives and Land use table

The southern portion of the site is zoned RU1 and the northern portion of the site is zoned RU2.

The objectives of the RU1 Primary Production zone are:

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To encourage diversity in primary industry enterprises and systems appropriate for the area.*

Agricultural produce industries are a nominated use that is permitted with consent.

3 Permitted with consent

Agricultural produce industries; Animal boarding or training establishments; Aquaculture; Bed and breakfast accommodation; Boat launching ramps; Boat sheds; Cellar door premises; Dual occupancies (attached); Dwelling houses; Environmental facilities; Extractive industries; Farm buildings; Farm stay accommodation; Flood mitigation works; Forestry; Group homes; Helipads; Home-based child care; Home businesses; Home industries; Industrial retail outlets; Intensive livestock agriculture; Jetties; Open cut mining; Plant nurseries; Roads; Roadside stalls; Rural workers' dwellings; Turf farming; Water recreation structures; Water storage facilities

As discussed in an earlier section of the report, information provided by the applicant has not satisfactorily demonstrated that the future uses of the site would be properly characterised as an agricultural produce industry. Information provided by the applicant indicates proposed future uses of the site would include the manufacturing of food products. The manufacture of food products is not consistent with the definition of an agricultural produce industry. The manufacture of food products is a type of industry which is a prohibited use.

Furthermore, the application has not demonstrated that the proposal complies with the objectives of the zone. Specifically the second objective seeks to encourage diversity in primary industry enterprises and systems appropriate for the area. The size and scale of the development (refer to detailed comments below) is not considered to be appropriate for the rural location.

The application has not provided sufficient information to demonstrate that the proposal is intended to, or will support primary industry enterprises. Future uses of the proposed development are intended for multiple agricultural produce industries (noting comments above regarding characterisation) however no information has been provided regarding which primary producers the proposed facility would support.

The objectives of the RU2 Rural Landscape zone are:

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To maintain the rural landscape character of the land.*
- *To provide for a range of compatible land uses, including extensive agriculture.*
- *To provide for a range of tourist and visitor accommodation-based land uses, including agri-tourism, eco-tourism and any other like tourism that is linked to an environmental, agricultural or rural industry use of the land.*

Agricultural produce industries area a type of rural industry which is a nominated use that is permitted with consent.

3 Permitted with consent

Airstrips; Animal boarding or training establishments; Aquaculture; Bed and breakfast accommodation; Boat launching ramps; Boat sheds; Camping grounds; Caravan parks; Cellar door premises; Cemeteries; Community facilities; Crematoria; Depots; Dual occupancies (attached); Dwelling houses; Eco-tourist facilities; Educational establishments; Extractive industries; Farm buildings; Farm stay accommodation; Flood mitigation works; Forestry; Funeral homes; Garden centres; Group homes; Helipads; Home-based child care; Home businesses; Home industries; Hostels; Industrial retail outlets; Industrial training facilities; Information and education facilities; Intensive livestock agriculture; Jetties; Kiosks; Landscaping material supplies; Markets; Open cut mining; Places of public worship; Plant nurseries; Recreation areas; Recreation facilities (major); Recreation facilities (outdoor); Restaurants or cafes; Roads; Roadside stalls; Rural industries; Rural supplies; Rural workers' dwellings; Signage; Timber yards; Transport depots; Truck depots; Turf farming; Veterinary hospitals; Water recreation structures; Water supply systems; Wharf or boating facilities

As previously stated, the application has not satisfactorily demonstrated that the future uses of the site would be properly characterised as an agricultural produce industry.

The proposal does not comply with the objectives of the zone. The proposal for 19 sheds to support a range of uses with a total gross floor area of 5.39ha is not considered to maintain the rural landscape character of the land. The development foot print of approximately 11ha comprising of access roads, 19 sheds ranging from 5000m² to 800m², parking for 450 vehicles, bio-retention basin, and acoustic wall resemble an industrial park. Proposed landscaping and any future requirements to vary the built form do not address the scale of the development and its relationship to the predominantly rural character of the locality.

The application has not provided information to demonstrate that the proposed development is compatible with existing rural land uses. Surrounding land uses comprises primarily of agricultural activities (grazing, cane farming) and rural residential uses. The lack of detail regarding proposed future uses of the site does not enable a proper assessment regarding compatibility of the proposal with respect to the rural locality. The amenity impacts (specifically resulting from increases in traffic and noise) of the proposed development has been raised as a concern in many of the 403 public submissions to the proposal

Clause 4.1 to 4.2A – Principal Development Standards (Subdivision)

No subdivision is proposed.

Clause 4.3– Height of Buildings

The statutory maximum height for development on the subject site is 10m. Whilst no construction works are proposed under this concept application, the proposed maximum building height is shown as 9m on the Site Elevation Plans DA-501 and DA-502.

As such, the proposal complies with the Maximum height limit of 10m

Clause 4.4 – Floor Space Ratio

No FSR applies to the subject site.

Clause 4.6- Exceptions to development standards

No exceptions to development standards are proposed.

Clause 5.4 – Controls relating to miscellaneous permissible uses

Not applicable.

Clause 5.10 – Heritage Conservation

The site is not contain a heritage item nor is it identified as being within a Heritage conservation area, nor is the site in the vicinity of any heritage item or heritage conservation area.

The site is not captured on mapping for known and predicative locations under the Tweed Aboriginal Cultural Heritage Management Plan.

Clause 5.11 – Bush fire hazard reduction

Bush fire hazard reduction work authorised by the Rural Fires Act 1997 may be carried out on any land without development consent.

A portion of the site is identified to be bush fire prone land. As such, pursuant to clause 5.11, bush fire hazard reduction work, as authorised by the Rural fires Act 1997, may be carried out without development consent.

An assessment of the bush fire risk of the proposal is provided in a later section of this report.

Clause 7.1 – Acid Sulfate Soils

The site is mapped as possibly containing Acid Sulfate Soils class 5. The application indicates that the site will be partially filled. No works are proposed which are likely to lower the water table and as such acid sulfate soils are not considered to be a constraint for the proposal.

Clause 7.2 – Earthworks

The application states that select filling will be undertaken to achieve floor levels above the flood planning level. No specific details have been provided for earthworks.

The application does not contain sufficient information to assess the impacts of the proposed fill on the drainage patterns of the land and any potential flooding impacts of the proposal. Further information was requested in this regard however a response to this matter has not been provided. Consent

cannot be granted as the provision of the clause have not been satisfied and the application is therefore recommended for refusal in this regard.

Clause 7.4 – Floodplain risk management

Not applicable. The proposal is not a risk adverse development listed in this clause.

Clause 7.5 – Coastal risk planning

Not applicable. The site is not identified on the coastal risk planning mapping.

Clause 7.6 – Stormwater Management

This clause does not apply noting that this clause applies to residential, business and industrial zones only.

Stormwater management is addressed in a later section of this report.

Clause 7.7 – Drinking Water Catchments

Not applicable. This site is not located in the drinking water catchment.

Clause 7.8 – Airspace operations

Not applicable. The site is not affected by airspace operations controls.

Clause 7.9 – Development in areas subject to aircraft noise

Not applicable. The site is not affected by aircraft noise.

Clause 7.10 – Essential Services

This clause states that (emphasis added):

Development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required—
(a) *the supply of water,*
(b) *the supply of electricity,*
(c) *the disposal and management of sewage,*
(d) *stormwater drainage or on-site conservation,*
(e) *suitable vehicular access.*

The site is not serviced by Council's water and sewer infrastructure.

Water

The SEE states that water tanks will be provided for the on-site capture of stormwater for re-use. The application did not indicate if the proposal intended to connect to Council's water network. No details have been provided

regarding expected water demand nor how the site will be serviced by adequate water provision.

The applicant was requested to provide water servicing details for the proposal including a Water Network Analysis. It was noted that the closest appropriate connection point to Council water infrastructure is located more than 2km from the site in Pottsville Road. Any proposed connection to Council's water network would need to cross the Pacific Motorway and obtain the consent for any works within the transport corridor from the relevant authority.

A response addressing this matter has not been received. As submitted the application does not provide any information to address the adequate supply of water. Consent cannot be granted for the concept proposal with respect to Clause 7.10(a) and is recommended for refusal in this regard.

Sewer

The application does not provide any detail regarding sewage servicing of the site. The following statement is provided in the SEE regarding wastewater:

It is noted that there is opportunity to share costs in providing joint infrastructure to achieve the wastewater disposal and once development approval is established appropriate discussions will be undertaken to determine if any shared arrangement are achievable.

Prior to the lodgement of the development application, discussions have occurred between the applicant and Council regarding sewage management for the proposed Food Hub development at the site. It was determined that there is existing limited capacity in the sewer network to accommodate development at the site.

This matter was considered at the Council Meeting of 19 November 2020 where it was resolved, subject to conditions, that an allocation of 100ET, based on the use of a pressure sewer system limited to an Average Dry Weather Flow (ADWF) of 0.778 L/s with a maximum daily volume of 67.2kL, be reserved for the proposed Food Hub development.

The Council report for the Pottsville Area Wastewater System Capacity and ET Allocations included the following statement.

Council has been approach by the proponents of the proposed Food Hub development, west of Seabreeze estate, over the past 2 years or so to determine how they could manage their sewage discharge. A number of alternatives have been investigated with no feasible options found. Historically, any remaining capacity in this system has been sort [sic] after by various proposed developments to the west and south of the Seabreeze Estate.

The conditions attached to the allocation of the 100ET spare wastewater network capacity included time constraints on the allocation as indicated below:

3. *That a Development application is lodged within 6 months of this resolution.*
4. *That a Development Application is approved within 18 months of this resolution.*

The application has not met the above conditions. The applicant has requested an extension to the holdover of the spare sewerage capacity however a decision on this matter was deferred at the Council Meeting of 16 June 2022 for further consideration.

The closest identified connection point for any future sewer connection is located at a distance of approximately 4.2km from the site. Any proposed connection to Council's sewerage network would need to cross the Pacific Motorway and obtain consent for any works within the transport corridor from the relevant authority.

The development application as submitted, has not provided any details of connections to Council's sewerage infrastructure. Consent cannot be granted for the concept proposal with respect to Clause 7.10(c) and is recommended for refusal in this regard.

Access

The application plans as submitted show three access points from Reserve Creek Road. The application did not indicate if any road upgrades are proposed.

Additional information provided by the applicant on 5 August 2022, indicated that an alternate site access and site configuration is proposed from Cudgera Creek Road. The amended layout appears to have been prepared to address noise impacts to 919 Cudgera Creek Road (near the intersection of Reserve Creek Road). A request to formally amend the application, an amended plan set or supporting documents have not submitted. An assessment of this amended layout has not been undertaken given the late stage of this submission and lack of supporting information.

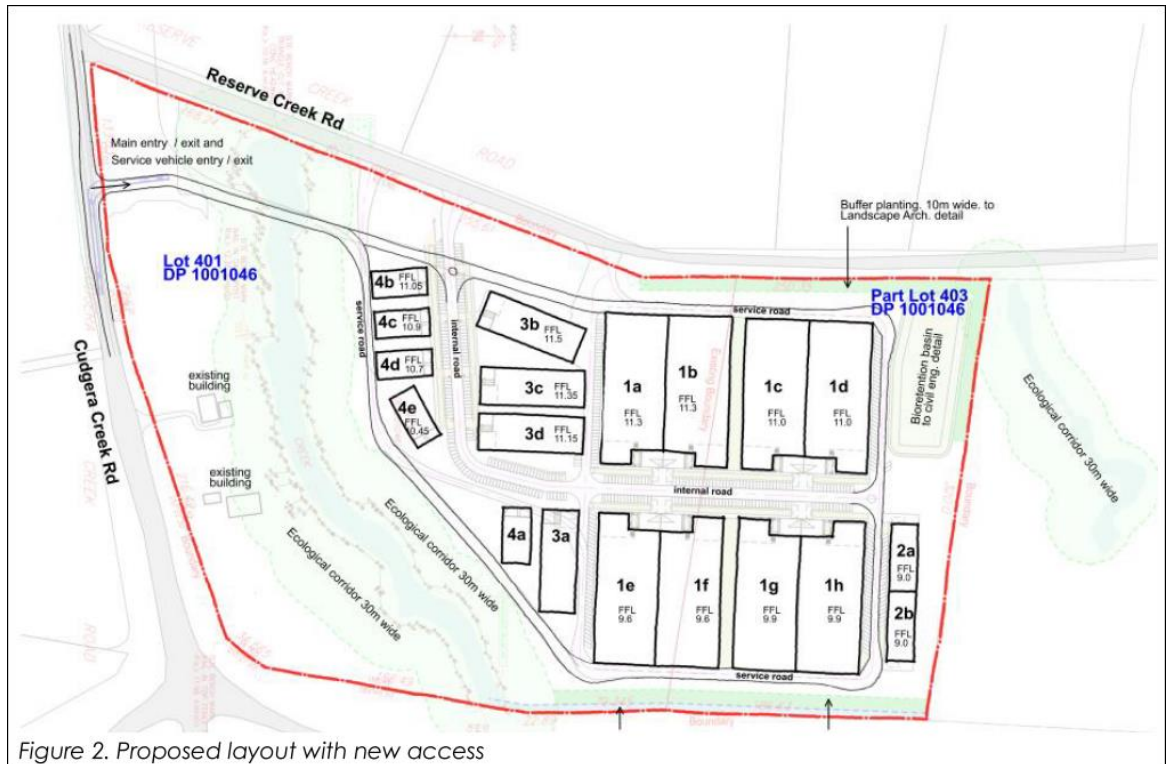


Figure 2. Proposed layout with new access

Figure 4 Alternate access and layout submitted 5 August 2022

The submitted Traffic Engineering report stated that the largest vehicle required to service the proposed development would be a 25m B-double.

Assessment of the application as submitted determined that upgrades are required to Reserve Creek Road to accommodate the reported traffic volumes and B-double vehicles. An alternate site configuration to remove access from Reserve Creek Road may remove the need to upgrade Reserve Creek Road. The application was referred to Transport for NSW (TfNSW) who noted that there was no gazetted access to Cudgera Creek Road west of the Pacific Motorway for B-doubles. TfNSW also noted that road upgrades would be likely be required to facilitate the movement of vehicles from the Pacific Motorway, along Cudgera Creek Road and onto Reserve Creek Road.

A request for further information was issued to the applicant on 21 February 2022 to address matters relating to access, road upgrades, internal road network, ecological impacts (resulting from access arrangements) and traffic network impacts. A detailed response to these items has not been provided.

Stormwater management

The proposal will result in a large increase impervious area for the site. The conceptual engineering drawings submitted show a bio-retention basin adjacent to the northern boundary of the site. A Stormwater Management Plan has not been submitted with the application which is required to address quality and quantity of stormwater discharged from the site.

Other relevant clauses

There are no other clauses applicable to the application.

State Environmental Planning Policies

SEPP Resilience and Hazards 2021 – Chapter 4 Remediation of land

A Preliminary Site Investigation (PSI) including a desktop assessment of available information, and a detailed site inspection was completed and indicated the property was cleared of native vegetation prior to 1962, and used as improved pasture for livestock grazing. No changes in land use were noted in subsequent aerials, which is supported by conversations with previous landowners. A demolished Cattle Dip, known as 'Cudgera Dip', is located approximately 250m southwest of the site. The subject site is currently predominately cleared land with pasture grass cover, with scattered vegetation along the watercourse running through the southern portion of the property. Five (5) existing structures are located on the site, with four fronting Cudgera Creek Road and a farm shed fronting Reserve Creek Road.

The Preliminary Site Investigation Report by HMC Environmental Consulting notes that no areas of concern or contaminants of potential concern were identified. The report concludes that no further investigation or remediation is required and that the site is suitable for the proposed use as an agricultural food hub.

SEPP (Industry and Employment) 2021- Chapter 3 Advertising and signage

The application has not included any details of signage.

SEPP (Biodiversity and Conservation) 2021 – Chapter 3 Koala habitat protection 2020

The site is greater than one hectare and is within the RU1 and RU2 and therefore the provisions of Chapter 3 apply to the site.

Before consent is granted, the consent authority must consider whether the land is potential koala habitat or core koala habitat. An ecological assessment dated 24 July 2022 submitted with application identified preferred koala food trees are located on the site. The application has not provided an assessment against the provisions of the Koala Habitat Protection 2020.

Council's further information letter requested a fauna survey be conducted of the site including a koala survey. A detailed response to this request is has not been provided.

Consent cannot be granted to the concept proposal as an assessment of potential koala habitat has not been undertaken in accordance with section 3.6 and 3.7 of Chapter 3. The application is recommended for refusal in this regard.

SEPP (Transport and Infrastructure) 2021 – Chapter 2 Infrastructure

Section 2.119 relates to development with frontage to a classified road. The objectives of this section are:

2.119 (1) The objectives of this section are—

- (a) *to ensure that new development does not compromise the effective and ongoing operation and function of classified roads, and*
- (b) *to prevent or reduce the potential impact of traffic noise and vehicle emission on development adjacent to classified roads.*

This section goes on to state that consent must not be granted to development on land with frontage to a classified road unless the following is satisfactorily addressed:

- 2.119 (2) *The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that—*
- (a) *where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and*
 - (b) *the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—*
 - (i) *the design of the vehicular access to the land, or*
 - (ii) *the emission of smoke or dust from the development, or*
 - (iii) *the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*
 - (c) *the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

The site's eastern boundary has a frontage to the Pacific Motorway which is a state classified road.

No vehicular access to the site is provided from the classified road. The type of development is not considered to be sensitive to traffic noise or vehicle emissions. No concerns are raised regarding smoke or dust emanating from the development at this concept stage. This matter can be further reviewed for any subsequent development applications.

Section 2.122 of Chapter 2 Infrastructure relates to traffic generating development and states:

- 2.122 (1) *This section applies to development specified in Column 1 of the Table to Schedule 3 that involves—*
- (a) *new premises of the relevant size or capacity, or*
 - (b) *an enlargement or extension of existing premises, being an alteration or addition of the relevant size or capacity.*

The proposal includes parking for 450 vehicles. Car parking provision for more than 200 vehicles is listed as development with the relevant size or capacity in Schedule 3.

Before determining a development application to which this clause applies, the consent authority must advise TfNSW of the application and must consider

any submission made by TfNSW, the accessibility of the site, traffic safety and road congestion.

The application was referred to Transport for NSW (TfNSW) in accordance with Section 2.122(3). TfNSW expressed concerns with the proposal noting the following:

- The submitted Traffic Impact Analysis was considered to be inadequate with regard to traffic data, trip generation, trip distribution and assessment of intersection performance;
- Heavy vehicle access was not demonstrated for the largest vehicle intended to service the site, being a 26m B-double. Road upgrades would be required to accommodate 26m B-double access.
- Any works within the Freeway corridor would be Integrated Development requiring General Terms of Approval from TfNSW.

The applicant was provided a copy of the comments from TfNSW on 14 December 2021. A response to the matters raised by TfNSW has not been provided. There is insufficient information to determine compliance with the provisions of clause 2.122 and as such the application is recommended for refusal in this regard.

SEPP (Planning Systems) 2021

The application has a capital investment value greater than \$30 million and as such the proposal is regionally significant development as per Part 2.4 of Planning Systems SEPP.

The Northern Regional Planning Panel is the consent authority in accordance with Section 4.5(b) of the *Environmental Planning and Assessment Act 1979*.

(a) (ii) The Provisions of any Draft Environmental Planning Instruments

There are no draft environmental planning instruments applicable to the proposal.

(a) (iii) Development Control Plan (DCP)

Tweed Development Control Plan

Section A2-Site Access and Parking Code

The aims and objectives of the Site Access and Parking Code are set out below.

Aims

1. *Provide safe, convenient and equitable access to developed land for pedestrians, cyclists, motorists and public transport users.*
2. *Provide facilities and infrastructure that encourage movement by means other than private vehicle.*

3. *Encourage car park design and landscaping to enhance visual amenity, provide pedestrian comfort, legibility and minimise impacts from stormwater runoff and pollution.*
4. *Provide off street parking facilities that satisfy the demand of residents, visitors, staff, customers, servicing, loading and unloading.*
5. *Provide integrated transport opportunities within business centres to improve their amenity, accessibility and sustainability.*

Objectives

1. *To achieve integrated car park design with high levels of amenity for users*
2. *To integrate site landscaping and water sensitive urban design to minimise hardstand areas and address site stormwater flow and pollution*
3. *Provide public domain, comfort and legibility treatments to support the volume of pedestrian movement in and around sites.*
4. *To ensure developments support pedestrian, cycling, vehicle and public transport demand through implementing prescriptive parking supply rates or site specific studies.*
5. *To manage generated traffic volumes and to minimise potential adverse impacts on the local road network.*
6. *Provide a planning framework for considering alternatives to established parking rates for community and business centres which are supported by integrated transport systems.*

The concept plans show an internal road layout and 450 parking spaces. The SEE states that 27 loading bays are to be provided.

No provision for pedestrian movement is shown on the plans. It is acknowledged that this may be addressed in later development applications if the concept application were approved.

The numerical parking controls for agricultural produce industries are 1 space per staff. Compliance with this control is unable to be determined as this concept application does not include any specific uses or related staffing levels. Alternatively, the rate for general industries may be used to provide a general estimation of parking demand. General industries require 1 parking space per 120m² GFA. With a total GFA of 53,930m² this equates to a parking requirement of 450 spaces. The plans demonstrate that appropriate parking for the proposal is able to be achieved.

An assessment of the submitted plans determined that Reserve Creek Road and possibly the Cudgera Creek Road/Reserve Creek Road intersection would require upgrading to cater for the stated traffic volumes and largest vehicle (26m B-double). The application does not include any details of road upgrades or assessment of any impacts from road upgrading works.

The applicant was requested to provide additional information regarding traffic impact analysis, turning templates, road upgrades, loading bays and operation of internal road network. A detailed response to the additional information request of 21 February 2021 has not been provided.

Section A3-Development of Flood Liable Land

The site is flood affected and as such the provisions of this Section apply. The designated flood level ranges from 7.5m to 13.2m AHD as illustrated below. The eastern portion of the site is mapped as being a High Flow Area.

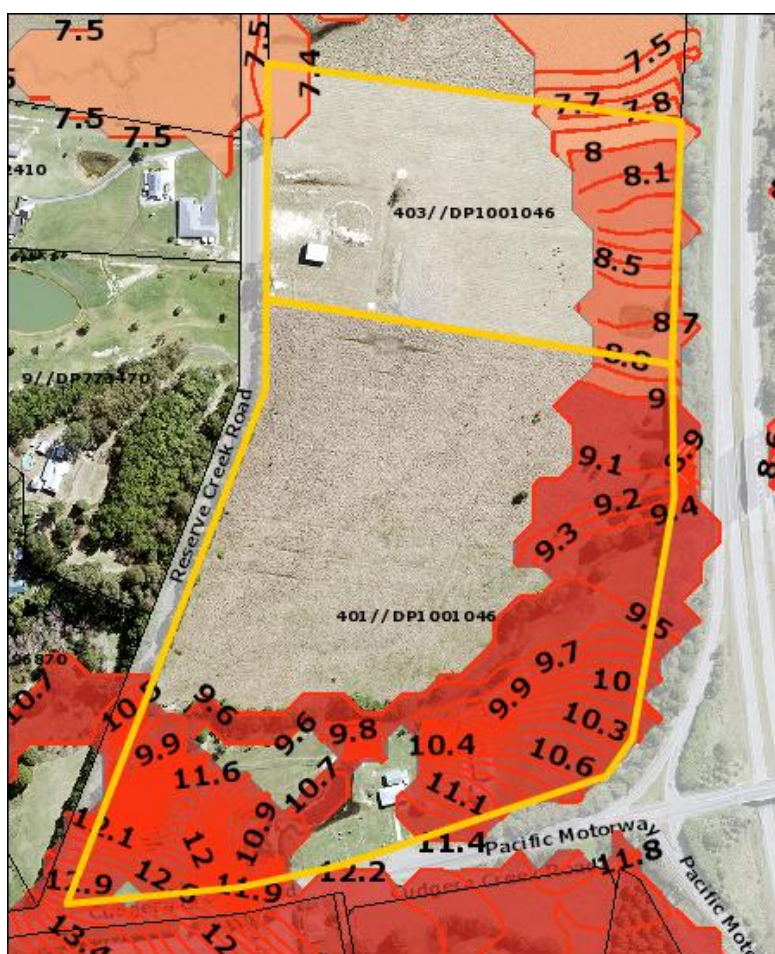


Figure 5 Design flood level in inundation areas (m AHD)

Filling of high flow area is limited to 300mm provided the development does not obstruct flood flows. The SEE states that filling is to be kept to a minimum and is only proposed in areas identified as 'low flow areas' with no filling in 'high flow areas'.

Detailed cut/fill drawings or a flood impact assessment is not provided. The application and plans do not provide sufficient detail to confirm the development foot print does not encroach into the high flow paths. The stormwater overflow relief link shown on the development plans is inadequate to accommodate stormflows in a flood event.

The applicant was requested to provide a Flood Impact Assessment and additional information regarding cut and fill, flood immunity and flood characteristics of access roads. A response to this additional information request has not been provided.

Section A4-Advertising Signs Code

The application as submitted does not include details of any signage. Signage can be assessed as part of any subsequent applications should the concept application be approved.

Section A15 – Waste minimisation and management

The application does not address waste management for the proposal. Waste management can be assessed as part of any subsequent applications should the concept application be approved.

Section A19 – Biodiversity and habitat management

The site exceeds 2,500m² and contains a waterway. As such this Section applies in accordance with Part 1, Chapter 3 of this Section.

A 30m setback is required for the Third Order stream on the site. A 30m setback is also required for the Third Order stream located on an adjacent lot to the north of the site.

The development plans prepared by Twohill & James show a 30m wide ecological setback corridor for the stream located on the southern portion of the site. The plans show a bio-retention basin encroaching into the 30m setback for the stream on the adjacent lot to the north of the site.

The submitted Habitat Management Plan shows a 30m setback buffer for the northern bank of the stream located on the site. No setback is shown to the southern bank of the stream or to the stream adjacent to the northern boundary.

The application does not address impacts to flora or fauna. Anticipated flora impacts include removal of paddock trees and possible removal of road side vegetation to facilitate access and any road upgrades. Potential fauna impacts include impacts resulting from removal of native vegetation, filling of soakage areas and dams, increased traffic movements, and potential impacts to the waterway.

The applicant was issued a request for further information in relation an amended habitat management plan, vegetation impacts, fauna assessment and hydrological impacts. A detailed response addressing these matters has not been provided.

(a)(iia) Any planning agreement or any draft planning agreement under section 7.4

There are no planning agreements applicable to the site or application.

(a) (iv) Any Matters Prescribed by the Regulations

Clause 61(1) Applications for demolition

Demolition of a 200m² (approximate area) farm shed will be required to facilitate the development. Demolition of this building can be addressed in any subsequent development application for works.

(b) The likely impacts of the development and the environmental impacts on both the natural and built environments and social and economic impacts in the locality

Regionally significant farmland

The site is identified as Regionally Significant Farmland by the Northern Rivers Farmland Protection Project (2005). The Northern Rivers Farmland Protection Project (NRFPP) highlights state and regionally significant agricultural land in the Northern Rivers. The project aims to protect a broad range of lands to cater for a range of agricultural industries that may be important currently or in the future, thereby keeping land options open for new crops and farming methods. Urban and rural residential development is to be limited on land identified by the project so that areas with the most potential for production are not lost to urban uses. The intention is to protect the land's farming potential, so land uses that alienate farmland, such as residential development, will be limited. The main effect of the project will be that mapped farmland will be avoided in the planning process for future residential areas.

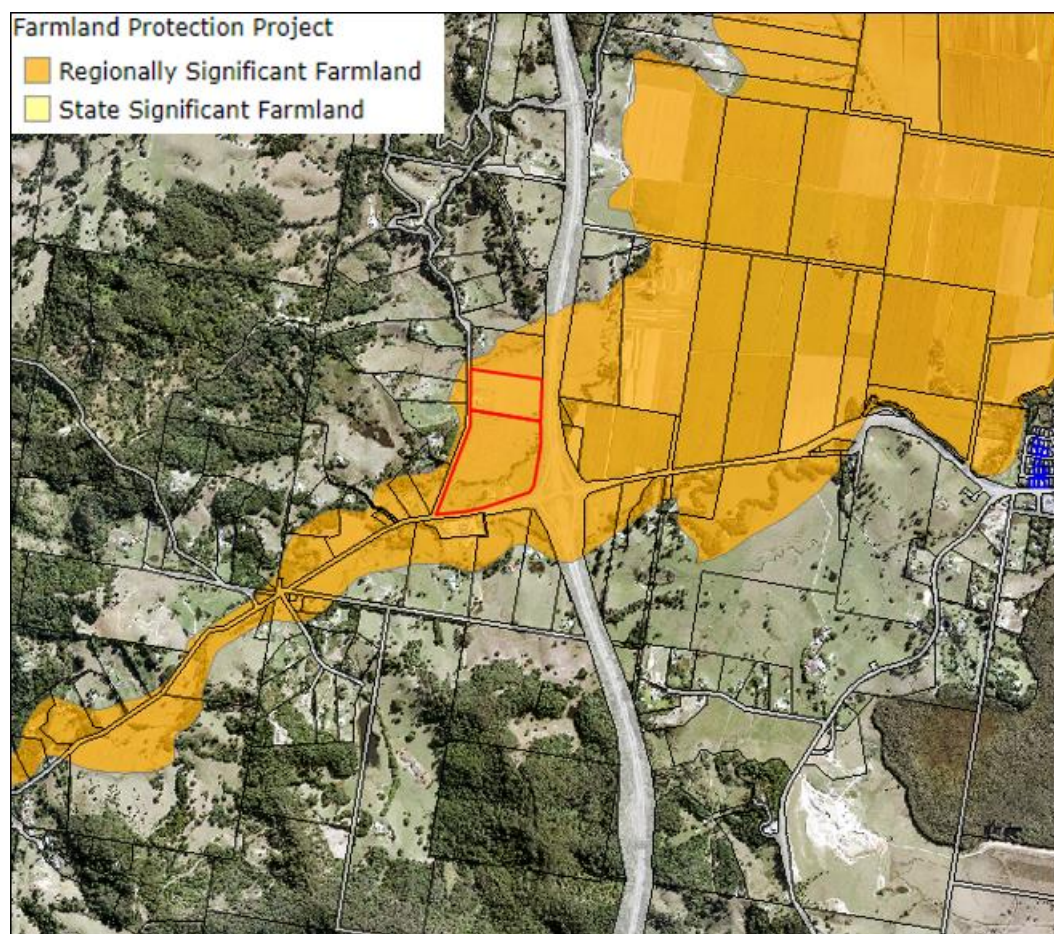


Figure 6 Image from Council's GIS mapping

The project lists mechanisms which may assist farmers to manage their land or conduct their business. This includes Farmers' markets and Farmers' cooperative(s) and Cooperative farming which may provide opportunities for linking production and/or land management activities between producers.

Development of an agricultural produce industry is consistent with the intent of the Northern Rivers Farmland Protection Project. However as discussed in an earlier section of this report, the information provided by the applicant raises concerns that the issue of a concept approval on the land would facilitate the use of this regionally significant farmland for general industrial uses – uses that would be more appropriately located on industrial zoned land.

Given that the proposal has failed to demonstrate that the future is use a type of rural industry, as opposed to a type of industry, the proposal cannot be considered to be consistent with the intent of the NRFPP.

Context and Setting

The site is located in a rural area in which predominate uses are agricultural and rural residential uses. A self-storage development located to the south of the site was approved in 2007 under a previous environmental plan and is not typical of the built form of the area. Self-storage units and storage premises are prohibited on RU1 and RU2 zoned land under the current TLEP 2014 and this development represents an anomaly in the local rural area.

The development of 5.39ha of sheds with associated access roads, 450 parking spaces and stormwater detention is of a scale that is not consistent with context and setting of the rural locality.

The proposed use of the site by multiple business represents an intensive use of the site that is not consistent with surrounding uses or context of the rural locality. As the future uses are unknown, it is difficult to determine if the cumulative impacts of the proposed future uses are reasonable given the rural setting.

Biodiversity

The site does not contain any High Biodiversity Values areas as indicated by the Biodiversity Values Map published by the NSW Department of Planning, Industry and Environment.

The extent of vegetation clearing has not been clearly identified however it is assumed that the area of clearing is likely to be less than 0.5 ha and therefore will not exceed the Biodiversity Offset Scheme threshold.

The proposed development has not provided sufficient information with regards to potential impacts on threatened flora or fauna to determine whether or not the proposed development will comply with the *Biodiversity Conservation Act 2016*.

Coastal zone management plan for the Tweed Coast estuaries

The aim of the Coastal zone management plan for the Tweed Coast estuaries (CZMP) is to document a management strategy for the Tweed Coast estuaries and tributaries. The long term vision for the Tweed Coast estuaries is stated as:

The Tweed Coast estuaries and their catchment will exhibit increased ecological health and resilience, support viable native fauna and flora habitats and populations, and provide a range of recreational opportunities and other ecosystems services that are valued by the community.

The site is located in the Cudgera Creek Catchment. Major pressures on the Cudgera Creek estuary include acid runoff from disturbance of acid sulfate soils, bank erosion and water quality.

The CZMP includes a range of strategies that include (but not limited to) protection and management of riparian vegetation, management of bank erosion, improvements in stormwater management and wastewater management, and the management of ecological sustainable urban development.

The request for further information issued to the applicant on 21 February 2021 included matters relating to ecological setbacks to riparian areas, habitat management of riparian corridors and the management of stormwater. A satisfactory response to the matters raised in the further information request would ensure that any future development of the site is consistent with the strategies outlined in the CZMP.

North Coast Regional Plan 2036

The site is captured by mapping of Important Farmland mapping under the North Coast Regional Plan (NCRP). The Important Farmland mapping is based on the earlier mapping projects being the *Northern Rivers Farmland Protection Project (2005)* and *Mid North Coast Farmland Mapping Project (2008)*.

The NCRP includes a range of actions to protect and enhance productive agricultural land and grow agribusiness across the region including the following:

11.4 Encourage niche commercial, tourist and recreation activities that complement and promote a stronger agricultural sector, and build the sector's capacity to adapt to changing circumstances.

11.5 Address sector-specific considerations for agricultural industries through local plans.

12.1 Promote the expansion of food and fibre production, agrichemicals, farm machinery, wholesale and distribution, freight and logistics, and processing through flexible planning provisions in local growth management strategies and local environmental plans.

The NCRP recognises that encouraging diversity in the agriculture sector through activities such as agritourism and the processing and packaging of produce and associated retail services, can make the sector more sustainable.

Sector specific considerations for agricultural industries or increased flexible planning provisions are yet to be delivered. Regardless, the application has not provided adequate information to confirm that the proposal is properly characterised as an agricultural industry. Whilst there is considerable doubt regarding the characterisation of future uses of the site, it is not possible to verify that the proposal is consistent with the intent of the NCRP.

Draft North Coast Regional Plan 2041

A review of the first 5 years of the North Coast Regional Plan 2036 is currently being undertaken to reset priorities and extend the reach of the NCRP from 2036 to 2041. Exhibition and submission phase of the draft NRCP was undertaken July 2022 to August 2022.

The Draft NRCP includes a range of strategies to protect important farmland and support agribusiness. These include the following strategies.

Strategy 8.1

Local planning should protect and maintain the productive capacity of Important Agricultural Land in the region by directing urban, rural residential and other incompatible development away from important farmland.

Strategy 8.2

Local planning should assist and support the agricultural sector to be more sustainable and resilient.

Strategy 14.1

Facilitate agribusiness employment and income-generating opportunities through the regular review of council planning and development controls, including suitable locations for intensive agriculture and agribusiness.

Strategy 14.2

Protect established agriculture clusters and identify expansion opportunities in local plans that avoid land use conflicts, particularly with residential and rural residential land uses.

Providing support for the agribusiness and food production sector continues to be a focus for the NCRP. There is a recognition however that agribusiness must be suitably located and avoid land use conflicts with other agricultural and rural residential uses.

(c) Suitability of the site for the development

The site is a rural site with limited infrastructure and considerable site constraints. The concept application has not demonstrated that this site is suitable for the proposed agricultural food hub which is intended to accommodate multiple businesses. Insufficient information is included in the application to determine that the site is suitable with regard to the following:

- Consistency with the character of the rural locality.
- Adequate provision of water and sewerage services;

- Potential impact on the flooding behaviour of the land;
- Demonstration that the largest vehicles intended to service the site are able to access and manoeuvre around the development;
- Potential impacts on surrounding property owners;

(d) Any submissions made in accordance with the Act or Regulations

The application was advertised and notified to adjoining property owners in accordance with Council's Community Engagement and Participation Plan. Due to a process error (site notifications signs not correctly erected) the application was notified and advertised on two occasions beginning 12 October 2021 and again on the 3 November 2021. The submission period totalled 64 days with a total of 403 public submissions received in relation the application. These comprised of 400 objections which were a mix of pro-forma letters and unique letters.

The applicant was provided a redacted copy of the submissions for review and comment. A response to the submissions by the applicant has not been received.

The primary matters raised in the submissions related to the appropriateness of the site for the development, traffic and amenity impacts and characterisation of the development as a rural industry when it appears to be an industrial development. Significant concerns were also raised regarding potential impacts on flood behaviour and potential pollution of the nearby waterway. The issues raised in the submissions are generally summarised in the below table.

Biodiversity	<ul style="list-style-type: none"> • Effect of light pollution on the natural environment or residents has not been addressed • Tree removal or impact on flora not addressed • Impact on koalas • Biosecurity risk to local area
Flooding	<ul style="list-style-type: none"> • Fill will disrupt hydrological flow and adversely impact waterways • Filling of site will increase flooding impacts to adjoining properties • No assessment of cumulative flooding issues
Stormwater	<ul style="list-style-type: none"> • Bio-retention basin is inadequate and overflow will result in pollution of nearby creeks • No consideration of pollution impacts to waterways
Traffic	<ul style="list-style-type: none"> • Increase in traffic and heavy vehicles will adversely impact road safety • Access from Motorway required further assessment for B-doubles • Increased road maintenance

	<ul style="list-style-type: none"> • Capacity of road network not suitable • Traffic assessment underestimates impacts • Increase in traffic noise
Strategic merit	<ul style="list-style-type: none"> • Negatively impacts primary production land/regionally significant farmland • Application is contrary to strategic planning efforts and undermines sustainable development • Application is contrary to strategic planning documents including the North Coast Regional Plan 2036, Tweed Local Strategic Planning Statement 2020, and the Pottsville Employment Land Planning Agreement. • Development will set an undesirable precedent
Rural Character/Amenity	<ul style="list-style-type: none"> • Appears as industrial development and should be located on industrial land • Adverse impact to the amenity and scenic rural character of the locality • Not rural development • Visual amenity impact • Overdevelopment of site • Disturbs night time amenity • Poor visual amenity outcomes for residents
Permissibility	<ul style="list-style-type: none"> • Proposed use as an agricultural food hub is unsubstantiated • Contrary to TLEP 2014 • Proposal is a distribution hub • Future use will be industrial
Economic	<ul style="list-style-type: none"> • Unlikely the proposal will result in local job creation • Negative effect on land values • Economic need not demonstrated for this scale of development • Economic impact assessment not provided • Cost to ratepayers to provide essential infrastructure
Essential services	<ul style="list-style-type: none"> • Water and sewerage has not been addressed • No assessment of road upgrades • No provision for fire fighting • Existing infrastructure not adequate for the proposal • Waste disposal not addressed • Impacts from potential water and sewerage connections not addressed
Lack of community consultation	<ul style="list-style-type: none"> • Lack of community by the applicant to local residents

Noise	<ul style="list-style-type: none"> • Lack of acoustic attenuation on the northern boundary. Noise will travel up the valley. • Noise from traffic and forklifts has not been adequately mitigated
Other	<ul style="list-style-type: none"> • Proposal will result in land use conflict with agricultural uses • Potential odour impacts are not addressed • Aboriginal cultural heritage has not been addressed • Facility will attract vermin • Lack of transparency regarding future uses • Ancillary uses not justified and include prohibited uses for the zone

The application was nominated as Integrated Development under the Water Management Act and referred to the Natural Resources Access Regulator. The application was also referred to a number of other external agencies. Responses from each of the relevant agencies are provided below.

Agency	Agency response
Natural Resources Access Regulator under section 91 of the Water Management Act relating to a controlled activity	The development is on waterfront land identified as being a tributary to Cudgera Creek. General Terms of Approval were issued requiring a Controlled Activity approval be obtained for the development.
Roads and Maritime Service (TfNSW Development Services) under section 2.122 of SEPP (Transport and Infrastructure) 2021 relating to traffic generating development	A request for further information was issued. The response noted that the development has the potential to generate a significant uplift in traffic demand and that the submitted Traffic Impact Assessment was not a reliable, robust and complete assessment of the likely impacts of the proposal. Additional comments were provided on the submitted Traffic Impact Assessment prepared by TTM and dated 21 May 2021 in a separate attachment. The comments related to traffic data, the basis for the traffic analysis, intersection performance, access to active and public transport, and heavy vehicle access (including B-double access).
Rural Fire Service under s4.14 of the <i>EP&A Act</i>	Conditions were recommended relating to asset protection zones, construction standards, access, water and utility services and landscaping.

The applicant was provided a copy of the comments provided by TfNSW on 14 December 2021. These comments were also included in Council's RFI date 21 February 2021. The applicant has not provided a detailed response these matters.

(e) Public interest

The proposal is not considered to be in the public interest for the following reasons:

- The information provided by the applicant has not demonstrated that future uses of the site are permissible within the RU1 and RU2 zones. On the contrary, the information received to date suggests the proponents would seek to accommodate prohibited uses such as food manufacturing, light industry, and function centres on the site.
- The concept application does not include details of future uses of the site and as such, it is not possible to properly assess all the potential impacts from these uses or if these impacts are considered reasonable with respect to the rural location;
- The size and scale of the proposed development is not considered to be consistent with the rural character of the area;
- The application has not included sufficient information to assess the impact of the development on Council's water and wastewater infrastructure.

OPTIONS

1. Refuse the application for the reasons stated below.
2. Defer determination of the application and specify reasons.

UNDER SEPARATE COVER

CONFIDENTIAL ITEM - Legal advice provided by Marsdens Law Group dated 4 July 2022

Other documents:

- Concept development plans
- Further information request issued to applicant dated 21 February 2022

RECOMMENDATION

That Development Application DA21/0812 for a concept application for an agricultural food hub comprising of 19 industrial sheds, associated earth works and internal site roads (NRPP) at Lot 403 DP 1001046; No. 1023 Cudgera Creek Road CUDGERA CREEK; Lot 401 DP 1001046; No. 931 Cudgera Creek Road CUDGERA CREEK, be refused for the following reasons.

1. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act* the application has not demonstrated compliance with the Tweed Local Environment Plan 2014. Specifically the following clauses:
 - i. Clause 1.2 Aims of the plan – The proposal is not considered to meet the aims of the plan in that:
 - (d) The application fails to demonstrate that it meets the principles of ecologically sustainable development in accordance with clause 1.2(2)(d);
 - (e) The application fails to demonstrate that it conserves the biological diversity, scenic quality and ecological integrity of the Tweed in accordance with clause of the 1.2(2)(g);

- (f) The application fails to demonstrate that it has considered the protection of koalas and koala habitat in accordance with 1.2(2)(j).
 - ii. Clause 2.3 Zone objectives and land use table – the application has not demonstrated that the intended future use of the site is properly characterised as an agricultural produce industry. Consequently the application has not demonstrated that the future proposed use of the site is a permissible use in accordance with the land use tables for the RU1 and RU2 zones.
 - iii. Clause 7.2 Earthworks – The application has not provided sufficient information to determine the impacts of any fill on the drainage patterns of the land.
 - iv. Clause 7.10 Essential services – The application has not demonstrated that water and sewerage management services are able to be provided for the development or that the vehicular access is suitable.
2. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act* the application has not demonstrated compliance with clause 3.6 of the SEPP (Biodiversity and Conservation) 2021. The application has not provided an assessment to determine if the site supports potential koala habitat.
 3. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act* the proposal has not demonstrated compliance with clause 2.122 of SEPP (Transport and Infrastructure) 2021. The application has not provided sufficient information to determine that the development is suitable for the site with regard to accessibility of the site appropriate for the development.
 4. Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act* the application has not demonstrated compliance with the Tweed Development Control Plan 2008. Specifically the following sections:
 - i. Section A2 – Site Access and Parking Code. The application has not demonstrated that suitable access is provided for the proposal with regard to traffic volumes, maximum vehicle sizes and internal site configuration.
 - ii. Section A3 – Development of Flood Liable Land. The application contains insufficient information to determine the potential impact of the proposal on the flood behaviour of the land.
 - iii. Section A19 – Biodiversity and Habitat Management. The application has not provided adequate information to determine the impact of the proposal on fauna, flora or environmentally sensitive areas.
 5. Pursuant to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act* the application contains insufficient information to determine the likely impacts of the proposal on the natural and built environment. The development represents an intensive use of the site that is not consistent with the existing rural uses. Insufficient information is provided regarding the impacts of the future built form on the physical environment. Additionally, insufficient information has been provided on the future uses of the site to determine if the cumulative impacts of the development is reasonable given the rural location.

6. Pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act* the proposal is not considered to be suitable for the site. The size and scale of the development is not considered to be consistent with the character of the rural area.
7. Pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act* the proposal is not considered to be in the public interest for the following reasons:
 - i. The information provided by the applicant has not demonstrated that future uses of the site are permissible within the RU1 and RU2 zones;
 - ii. The concept application does not include details of future uses of the site and as such, it is not possible to properly assess all the potential impacts from these uses or if these impacts are considered reasonable with respect to the rural location;
 - iii. The size and scale of the proposed development is not considered to be consistent with the rural character of the area;
 - iv. The application has not included sufficient information to assess the impact of the development on Council's water and wastewater infrastructure.