

**COUNCIL ASSESSMENT REPORT
NORTHERN REGIONAL PLANNING PANEL**

PANEL REFERENCE & DA NUMBER	PPSNTH-358 – DA24/0352
PROPOSAL	Demolition of existing structures erection of a caravan park containing 267 long term sites and 12 short term sites, clubhouse, outbuildings and associated road (NRPP)
ADDRESS	Lot 250 DP 755701 - No. 1183 Cudgera Creek Road CUDGERA CREEK
APPLICANT	Arbus Pottsville Pty Limited
OWNER	Mr Gregory C King
DA LODGEMENT DATE	30 July 2024
APPLICATION TYPE	Development Application
REGIONALLY SIGNIFICANT CRITERIA	Clause 2, Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021: Development that has a capital investment value of more than \$30 million.
CIV	\$45,692,574.53 (excluding GST)
CLAUSE 4.6 REQUESTS	Not applicable
TOTAL & UNIQUE SUBMISSIONS	162 submissions (155 objections)
KEY ISSUES	Owner's Consent Permissibility in RU1 Zone Zone Objectives Biodiversity And Ecology Supply of Water and Sewer Visual Impact Land Use Conflict Bushfire Contamination Earthworks Flooding Extensive Outstanding Information
DOCUMENTS SUBMITTED FOR CONSIDERATION	Site Photos Render Images General Arrangements Plan Site Schedule Areas Plan Statement of Landscape Design Intent Scenic Impact Assessment Architectural Planset (Community Facilities) Architectural Planset (Movable Dwelling)

	Concept Engineering Stormwater Management Plan Traffic Impact Assessment Preliminary Geotechnical Assessment Preliminary & Detailed Site Investigation Biodiversity Development Assessment Report Mosquito Management Plan Land Use Conflict Risk Assessment Aboriginal Cultural Heritage Assessment Bushfire Threat Assessment Reticulated Water Servicing Assessment Effluent Management Plan Wastewater Treatment Plant Details Electrical Review & Supply Strategy Telecommunication Servicing Waste Management Plan Socio-Economic Impact Assessment Estimated Development Cost Report Flood Impact Assessment Flood Response Assessment Plan Legal Advice
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)	Not applicable
RECOMMENDATION	Refusal
SCHEDULED MEETING DATE	20 May 2025
PREPARED BY	Asmara Tesfa
DATE OF REPORT	6 May 2025

EXECUTIVE SUMMARY

The development application (DA24/0352) seeks approval for the demolition of existing structures and the establishment of a large-scale caravan park at 1183 Cudgera Creek Road, Cudgera Creek. The proposal includes 267 long term sites for self-contained moveable dwellings, 12 short term tourist sites, community facilities, multiple ancillary buildings, landscaping and extensive supporting infrastructure including access roads, a private wastewater treatment system and other essential services.

As the proposed development has a Capital Investment Value exceeding \$30 million, it is classified as regionally significant and is therefore referred to the Northern Regional Planning Panel (Panel) for determination.

The subject site is a large rural property located within the Cudgera Creek area. The site has a total area of 119.85 hectares and is located approximately 4 kilometres west of Pottsville. Irregular in shape, the site has road frontages to both Cudgera Creek Road and Tom Merchant Drive and features topography ranging from approximately 2 metres AHD to 27 metres AHD. The site is surrounded by agricultural land uses to the north, south and west, with residential communities, including Koala Beach Estate and Seabreeze Estate, situated to the northeast and southeast of the site. Ecologically, the site is highly sensitive due to its proximity to extensive coastal wetlands and its location within a landscape of high conservation value. Cudgera Creek, which forms the southern boundary of the site, is a critical ecological corridor that supports a range of native flora and fauna, including threatened species and endangered ecological communities.

The application was publicly exhibited from Wednesday, 14 August 2024 until Wednesday, 11 September 2024, during which 162 submissions were received. The majority of submissions raised objections, with only 7 in support. The main issues raised relate to site suitability and zoning, visual impact, lack of adequate infrastructure and services, traffic, environmental impact, earthworks, flooding and effluent disposal.

This proposal constitutes Integrated Development pursuant to the Rural Fires Act 1997 (Section 100B), Water Management Act 2000 (Section 91) and Fisheries Management Act 1994 (Section 201). Referrals were also made to Essential Energy and Transport for NSW (in accordance with the State Environmental Planning Policy (Transport and Infrastructure) 2021) and to the Tweed Byron Aboriginal Land Council.

Jurisdictional prerequisites imposed by the following have not been satisfied including:

- Section 2.8 of the State Environmental Planning Policy (Resilience & Hazards) 2021 for consideration of impacts on the adjacent coastal wetland;
- Section 2.10 of the State Environmental Planning Policy (Resilience & Hazards) 2021 for consideration of impacts on the coastal environment area;
- Section 4.6 of the State Environmental Planning Policy (Resilience & Hazards) 2021 for consideration of contamination;
- Clause 5.21 of the Tweed Local Environmental Plan 2014 for consideration of flooding; and
- Clause 7.10 of the Tweed Local Environmental Plan 2014 for consideration of the provision of essential services.

The application proposes primary access to the development via a connection from Cudgera Creek Road to Johansons Road. To enable this access, works are required within the Cudgera Creek road reserve, including upgrades to its intersection with Johansons Road and the construction of a 30 metre bridge over Cudgera Creek. While Cudgera Creek Road is Council owned road reserve, Johansons Road and parts of the bed of Cudgera Creek are owned by the Crown. The application was lodged with correspondence from Crown Lands dated 5 July 2024 granting Owners Consent conditional upon the transfer of Johansons Road to Tweed Shire Council and Tweed Shire Council acquiring part of the bed of Cudgera Creek. This correspondence is provided at **Attachment B**.

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As a result of the works within Cudgera Creek Road, a formal request for Council's Owner's Consent was considered at the Council Meeting on 24 October 2024. Council resolved to refuse the request for Owner's Consent. The formal resolution is provided at **Attachment C**. Consequently, Council also does not agree to the land transfers and acquisitions required for the Crown's conditional consent to take effect. The applicant was advised that Council refused to grant Owner's Consent on 29 October 2024.

In light of Council's refusal to grant Owner's Consent, the Panel, as the Consent Authority, cannot approve the application, as key components of the proposed works are situated on land owned by Council. This matter represents a procedural impasse, leaving refusal as the only option for determination.

In addition to the critical procedural issue related to Owner's Consent, an assessment of the application has identified the following key issues:

1. Permissibility in RU1 Zone
2. Zone Objectives
3. Biodiversity and Ecology
4. Water and Sewer Supply
5. Visual Impact
6. Land Use Conflict
7. Bushfire Risk
8. Contamination
9. Earthworks
10. Flooding
11. Extensive Outstanding Information

Given that the application cannot proceed without Council's Owner's Consent, and considering the breadth and significance of the unresolved issues identified, Council determined that issuing a Request for Further Information was not warranted.

Following an assessment of the matters for consideration under Section 4.15(1) of the Environmental Planning and Assessment Act 1979, the provisions of the relevant State Environmental Planning Policies, the Biodiversity Conservation Act 2016, the Tweed Local Environmental Plan 2014, and the Tweed Development Control Plan 2008, it is concluded that the proposal cannot be supported.

The application is recommended for refusal subject to the reasons at **Attachment A**.

1. THE SITE AND LOCALITY

1.1 The Site

The site is comprised of a large rural property located within the Cudgera Creek area which is located approximately 4 kilometres west of Pottsville. The site has a total area of approximately 119.85 hectares and is irregular in shape with road frontages to Cudgera Creek Road and Tom Merchant Drive. The topography varies between approximately 2m AHD to 27m AHD. Whilst a significant portion of the site is relatively flat, there is a significant elevated ridgeline that traverses the site.

The site is currently improved with two dwelling houses, sheds, swimming pools, driveway access, fencing and agricultural operations. Cane farming has historically occurred on the low-lying areas of the site as well as small scale cattle farming on the elevated areas of the land. Primary access to the site is via Johansons Road, an unsealed road which includes a small bridge crossing over Cudgera Creek.

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The site is primarily split zoned RU1 Primary Production and RU2 Rural Landscape under the Tweed Local Environmental Plan 2014. A small portion of the site along the southern boundary is also zoned 1(a) Rural and 1(B2) Agricultural Protection under the Tweed Local Environmental Plan 2000.



Figure 1: Site Photos (Source: Applicant)

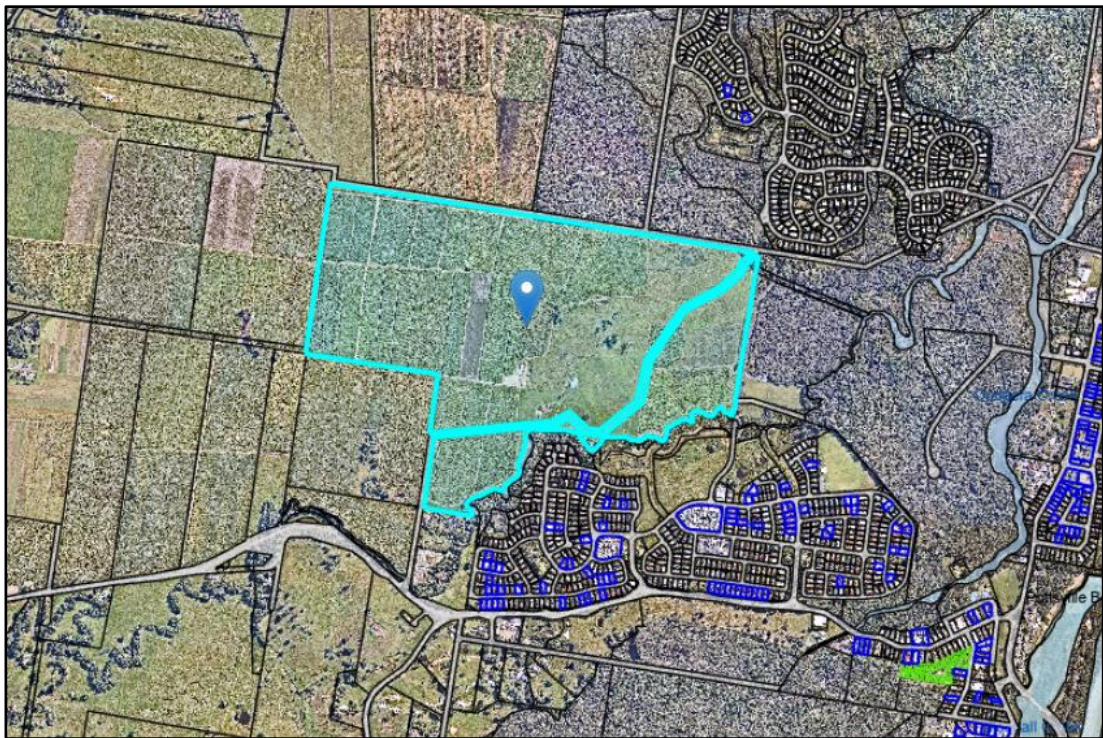


Figure 2: GIS Aerial Imagery (Source: Tweed Shire Council)

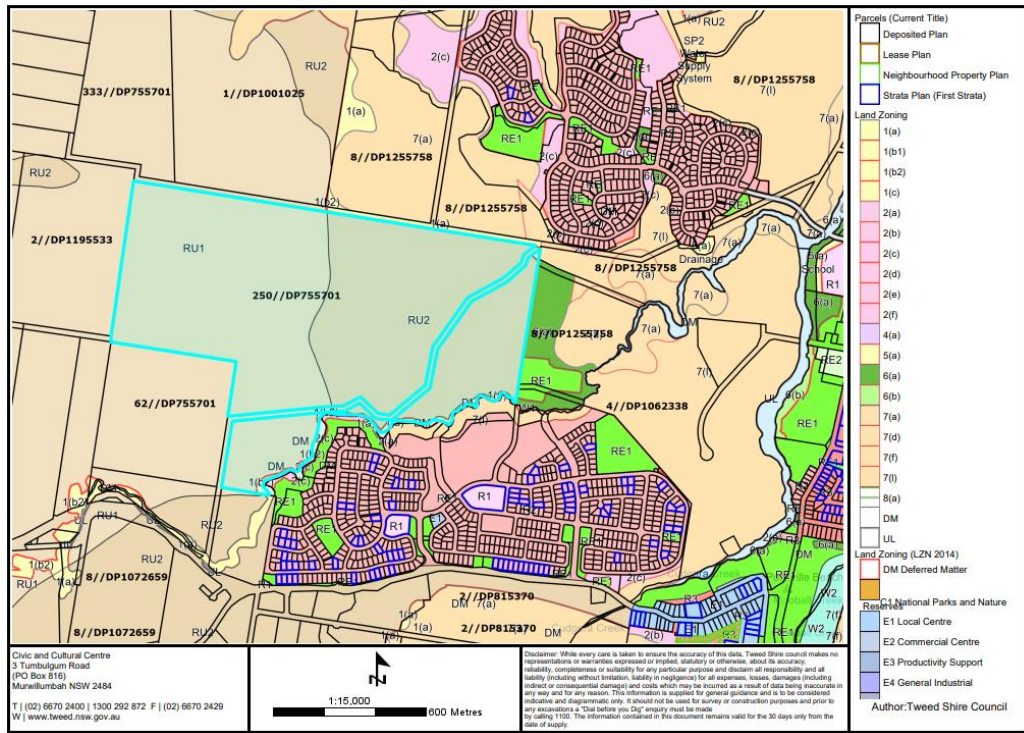


Figure 3: GIS Map with Local Environmental Plan Zoning overlay (Source: Tweed Shire Council)

The site features significant ecological features. To the north and northeast of the site is an extensive Coastal Wetland recognized under State Environmental Planning Policy (Resilience & Hazards) 2021. The site is mapped as both Coastal Wetlands and Proximity Area for Coastal Wetlands.

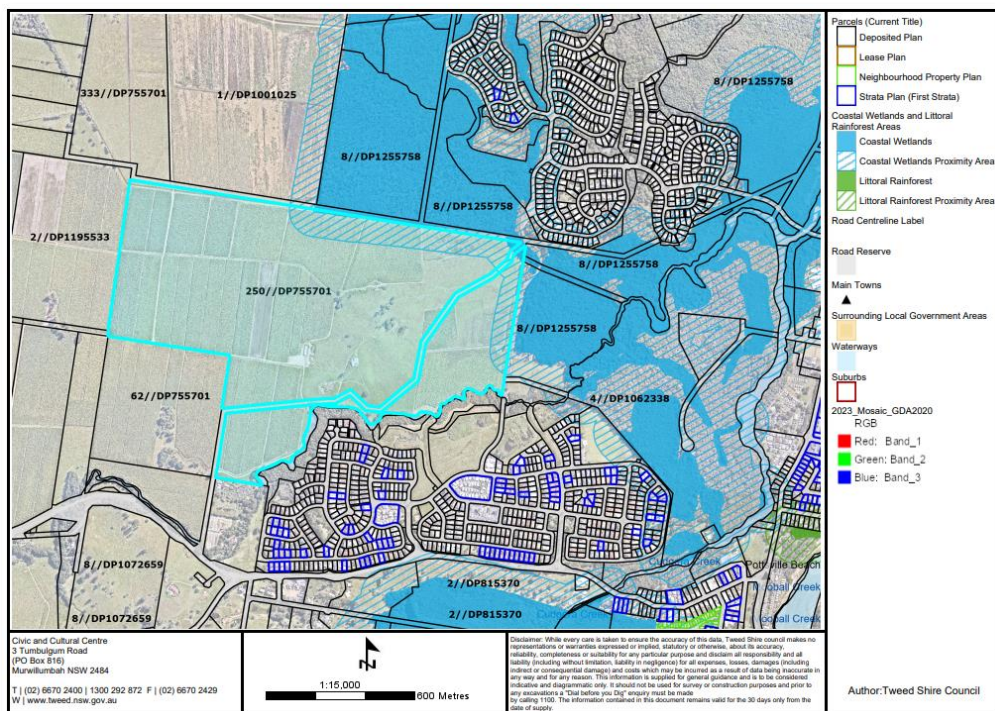


Figure 4: GIS Map with Coastal Wetland and Proximity Area for Coastal Wetland overlay (Source: Tweed Shire Council)

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The NSW Biodiversity Values Map made under the Biodiversity Conservation Act 2016 identifies high conservation value areas including biodiverse riparian land to the south-west of the site associated with Cudgera Creek and a Coastal Wetland identified under the Coastal Management Act 2016 to the north and north-east of the site.

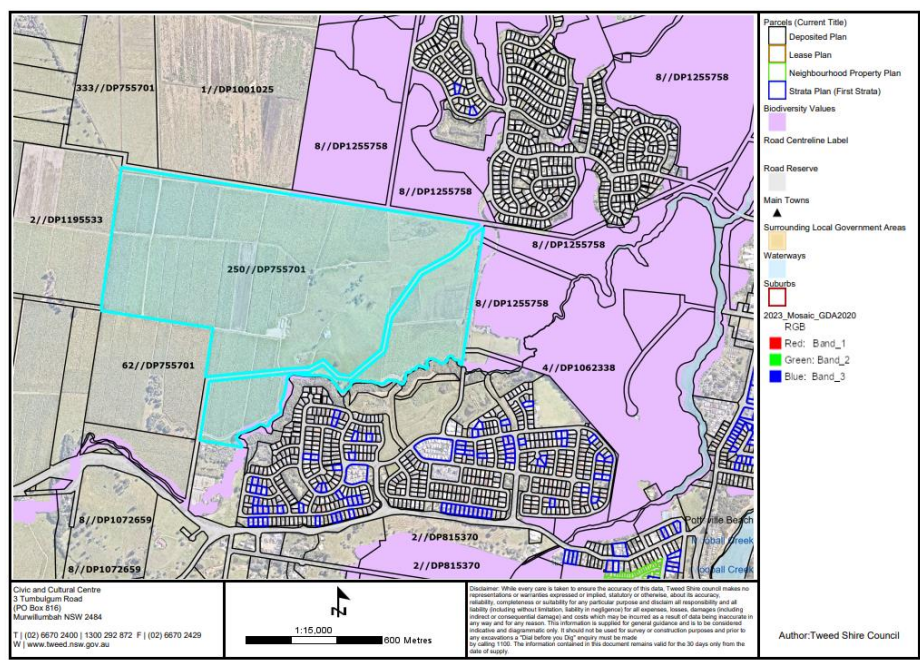


Figure 5: GIS Map with NSW Biodiversity Values Map overlay (Source: Tweed Shire Council)

The site is depicted below.



Figure 6: Existing bridge over Cudgera Creek (Source: Tweed Shire Council)

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Figure 7: Northern view of dwelling house proposed to be demolished (Source: Tweed Shire Council)



Figure 8: Northwestern view from the site (Source: Tweed Shire Council)

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Figure 9: Western view from the site (Source: Tweed Shire Council)



Figure 10: Southeastern view from the site towards Seabreeze Estate (Source: Tweed Shire Council)



Figure 11: Eastern view from the site towards Tom Merchant Drive (Source: Tweed Shire Council)



Figure 12: Northeastern view from elevated knoll towards Tom Merchant Drive and the Koala Beach Estate (Source: Tweed Shire Council)

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Figure 13: Western View of the site from Tom Merchant Drive (Source: Tweed Shire Council)

1.2 The Locality

Agricultural and farming uses are located to the north, south and west of the site. The rolling topography provides for the presence of several high points on the periphery of the area which provides an appealing visual backdrop.

Residential estates namely Koala Beach Estate and Seabreeze Estate are located to the northeast and southeast of the site. The Koala Beach Sports Field is to the east of the site which is located on Tom Merchant Drive.

The locality provides a pattern of distinct residential areas separated by green buffers including wetland, bushland areas, wildlife corridors and rural land. The pockets of residential development are primarily low density with detached forms of accommodation.

The main channel of Cudgera Creek forms the southern boundary of the site. To the north is a secondary channel of Cudgera Creek draining to the east along the boundary of the site. The creek is a significant feature of the locality that provides an important ecological corridor which provides habitat for important flora and fauna.

The site is adjacent to the Koala Beach Wildlife Protection Area which is under Council management.

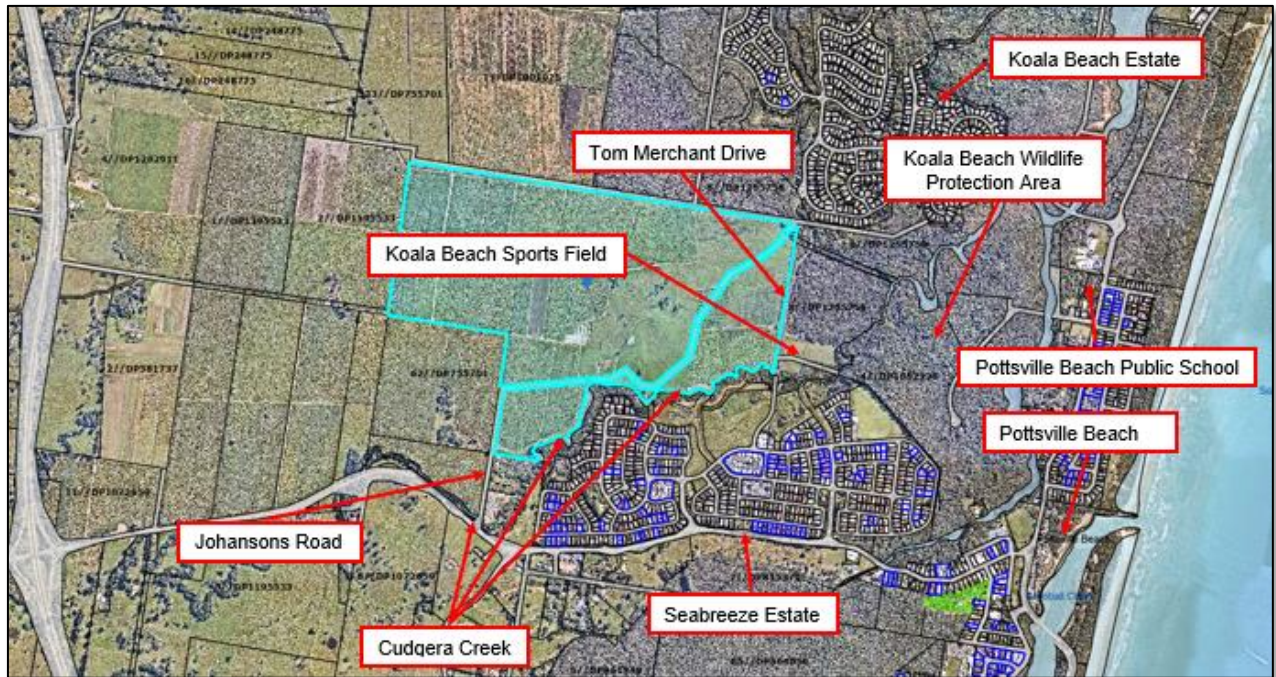


Figure 14: Locality Features (Source: Tweed Shire Council)

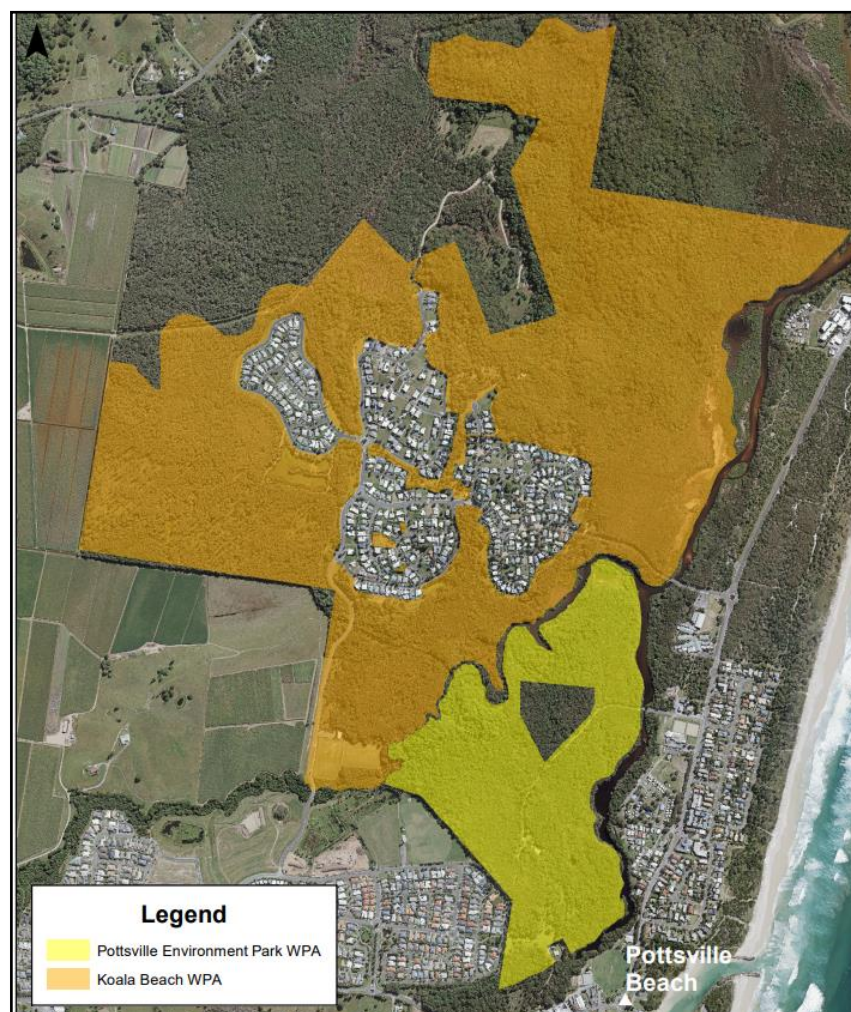


Figure 15: Koala Beach Wildlife Protection Area (Source: Tweed Shire Council)

2. THE PROPOSAL AND BACKGROUND

2.1 The Proposal

The proposed development primarily comprises:

Demolition

- Farm buildings and other infrastructure such as fencing;
- 2 existing dwelling houses;
- Overhead power line and power pole; and
- Johansons Road bridge.

Road

- Upgrades to Cudgera Creek Road to improve access to Johansons Road including widening, realignment and sealing of Johansons Road;
- Construction of a 30m bridge over Cudgera Creek;
- Construction of bridge or culvert structures to maintain site drainage;
- Fill to increase the finished level of the road to be above the modelled 1% annual exceedance probability flood levels; and
- Removal of trees.

Caravan Park

- 267 long term sites;
- 12 short term sites;
- 84 visitor car parking spaces;
- Community facility building with indoor pool and spa;
- Outdoor pool and spa,
- Bowling rink and pickle ball court;
- Potting and gardening building;
- Grounds maintenance/hobby shed;
- Access roads connecting the site to Cudgera Creek Road and Tom Merchant Drive and internal road network;
- Onsite sewage treatment, wet weather effluent storage and disposal;
- Stormwater management infrastructure;
- Services infrastructure;
- Earthworks;
- Tree removal; and
- Landscaping.

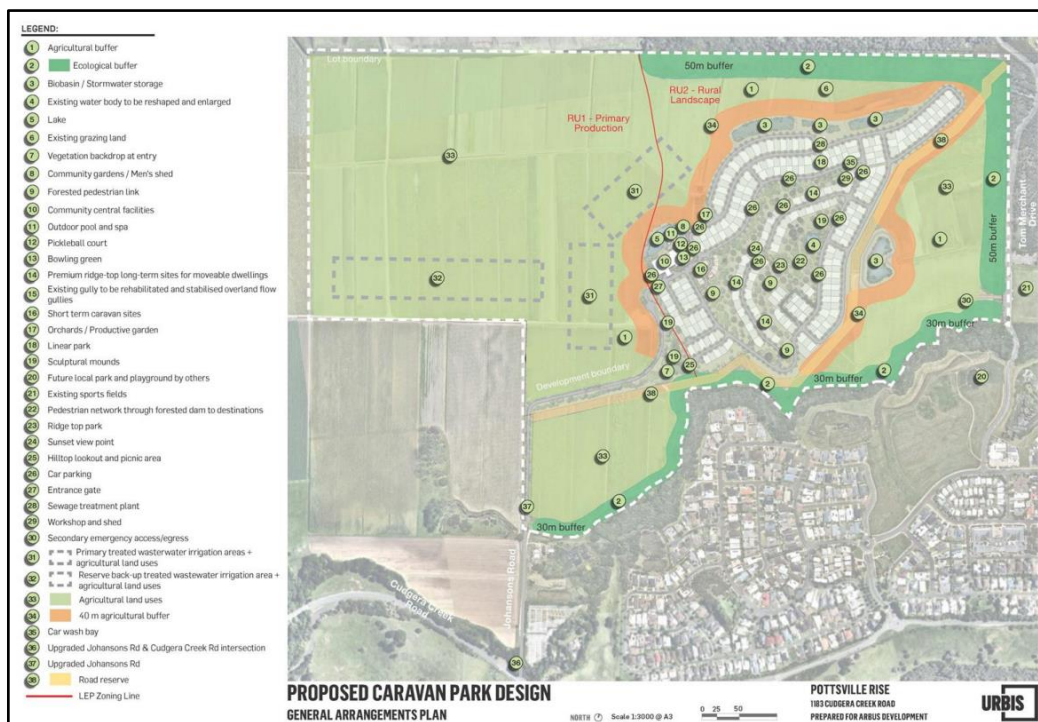


Figure 16: General Arrangements Plan (Source: Applicant)



Figure 17: Site Schedule Plan (Source: Applicant)

The development data is outlined in Table 1.

Table 1: Development Data

Control	Proposal
Site area	119.85 hectares
Clause 4.6 Requests	No

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No of sites	Long term sites: 267 Short term sites: 12
Max Height	9 metres
Car Parking spaces	84 spaces

2.2 Background

A pre-lodgement meeting was held prior to the lodgement of the applicant on 21 September 2022 where various issues were discussed including characterisation of the development, objectives of the applicable land zones, flooding, bulk earthworks, visual impact and servicing restrictions.

The development application was lodged on 30 July 2024. A chronology of the development application since lodgement is outlined in **Table 2**.

Table 2: Chronology of the DA

Date	Event
30 July 2024	Development Application lodged
14 August 2024	Exhibition of the Development Application open
11 September 2024	Exhibition of the application closed
15 August 2024	DA referred to external agencies
29 January 2025	Site visit
20 May 2025	Panel Briefing and Determination

2.3 Site History

The site has not been subject to any recent development proposals. A summary of the approvals relevant to the subject site is provided in **Table 3**.

Table 3: Development Consent History

Application	Description	Approved
0352/88B	Building Application - Machinery shed	13 May 1988
D88/0188	Development Application - Rural workers dwelling	4 May 1988
D90/0084	Development Application - Dwelling house	20 February 1990
0117/90B	Building Application - Dwelling	2 March 1990
0136/97B	Building Application - Dwelling	2 March 1990
0462/98B	Building Application - Dwelling	22 June 1998
K98/0507	Development Application - Swimming pool	29 October 1998

3. STATUTORY CONSIDERATIONS

When determining a development application, the consent authority must take into consideration the matters outlined in Section 4.15(1) of the Environmental Planning and Assessment Act 1979 ('EP&A Act'). These matters as are of relevance to the development application include the following:

- (a) *the provisions of any environmental planning instrument, proposed instrument, development control plan, planning agreement and the regulations*
 - (i) *any environmental planning instrument, and*
 - (ii) *any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
 - (iii) *any development control plan, and*
 - (iiia) *any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*
 - (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph),*
that apply to the land to which the development application relates,
- (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) *the suitability of the site for the development,*
- (d) *any submissions made in accordance with this Act or the regulations,*
- (e) *the public interest.*

These matters are further considered below.

The proposal is not considered to be:

- Designated Development (s4.10)
- Crown DA (s4.33)

The proposal is considered to be:

- Integrated Development (s4.46) pursuant to:
 - Rural Fires Act 1997 (s100B)
 - Water Management Act 2000 (s91)
 - Fisheries Management Act 1994 (s201)

The following is also relevant to the proposal:

- Requiring concurrence/referral (s4.13)
 - State Environmental Planning Policy (Transport and Infrastructure) 2021:
 - Determination of development applications—other development) – electricity transmission (s2.48(2))
 - Traffic-generating development (s2.122(4))

3.1 Environmental Planning Instruments, proposed instrument, development control plan, planning agreement and the regulations

The relevant environmental planning instruments, proposed instruments, development control plans, planning agreements and the matters for consideration under the Regulation are considered below.

(a) Section 4.15(1)(a)(i) - Provisions of Environmental Planning Instruments

The following Environmental Planning Instruments are relevant to this application:

- State Environmental Planning Policy (Planning Systems) 2021
- State Environmental Planning Policy (Biodiversity and Conservation) 2021
- State Environmental Planning Policy (Housing) 2021
- State Environmental Planning Policy (Industry and Employment) 2021
- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy (Transport and Infrastructure) 2021
- Tweed Local Environmental Plan 2014

A summary of the key matters for consideration are outlined in **Table 4** and considered in more detail below.

Table 4: Summary of Applicable Environmental Planning Instruments

EPI	Relevant Provisions	Comply
State Environmental Planning Policy (Planning Systems) 2021	<u>Chapter 2: State and Regional Development</u> <ul style="list-style-type: none"> • Section 2.19(1) declares the proposal regionally significant development pursuant to Clause 2 of Schedule 6 as it comprises that has a capital investment value of more than \$30 million. 	YES
State Environmental Planning Policy (Biodiversity & Conservation) 2021	<u>Chapter 3: Koala Habitat Protection 2020</u> <ul style="list-style-type: none"> • Section 3.8(2) states that determination of the development application must be consistent with the approved koala plan of management that applies to the land. 	NO
State Environmental Planning Policy (Housing) 2021	<u>Chapter 3: Diverse Housing</u> <ul style="list-style-type: none"> • Secondary dwellings, Group Homes, Co-living housing, build-to-rent housing, Housing for Seniors and people with a disability, short-term rental accommodation, manufactured home estates and caravan parks. 	NO
State Environmental Planning Policy (Industry and Employment) 2021	<u>Chapter 3: Advertising and Signage</u> <ul style="list-style-type: none"> • Section 3.6: granting consent to signage • Section 3.11(1): matters for consideration 	YES
State Environmental Planning Policy (Resilience & Hazards) 2021	<u>Chapter 2: Coastal Management</u> <ul style="list-style-type: none"> • Section 2.8(1): Development on land in proximity to coastal wetlands or littoral rainforest • Section 2.10(1) & (2): Development on land within the coastal environment area <u>Chapter 4: Remediation of Land</u>	NO

	<ul style="list-style-type: none"> Section 4.6: Contamination and remediation 	
State Environmental Planning Policy (Transport and Infrastructure) 2021	<u>Chapter 2: Infrastructure</u> <ul style="list-style-type: none"> Section 2.48(2) (Determination of development applications—other development): Electricity transmission Section 2.122(4): Traffic-generating development 	YES
Tweed Local Environmental Plan 2014	<ul style="list-style-type: none"> Clause 1.2: Aims of Plan Clause 2.2 & 2.3: Zoning, permissibility, objectives Clause 2.7: Demolition requires development consent Clause 5.10: Heritage conservation Clause 5.21: Flood planning Clause 7.1: Acid sulphate soils Clause 7.2: Earthworks Clause 7.10: Essential Services 	NO
Tweed Development Control Plan 2008	<ul style="list-style-type: none"> Section A2: Site access and parking Section A3: Development of flood liable land Section A13: Socio-economic impact assessment Section A15: Waste minimisation and management Section A19: Biodiversity and habitat management Section B21: Pottsville Locality Based Development Code 	NO

State Environmental Planning Policies

Consideration of the relevant State Environmental Planning Policies (SEPPs) is provided below.

EPI	Matters for Consideration
SEPP (Planning Systems) 2021	The proposal is regionally significant development pursuant to Section 2.19(1) (Chapter 2: State and Regional Development) as it satisfies the criteria in Schedule 6. The proposal is development that has a Capital Investment Value of more than \$30 million. Accordingly, the Panel is the Consent Authority.
SEPP (Biodiversity & Conservation) 2021	<u>Chapter 3: Koala Habitat Protection 2020</u> Pursuant to Section 3.8(1), the Tweed Coast Comprehensive Koala Plan of Management (Koala Plan of Management) is an approved koala plan of management. The site is within the Southern Tweed Coast Koala Management Area. Section 3.8(2) states that the determination of the development application must be consistent with the approved koala plan of management that applies to the land.

	<p>A Koala Habitat Assessment or Koala Activity Assessment has not been completed in accordance with the methods prescribed in the Koala Plan of Management. The presence/absence of on-site activity has not been verified by the completion of a Koala Activity Assessment. The Biodiversity Development Assessment Report prepared by Biodiversity Australia dated 29 May 2024 makes no reference to the Koala Plan of Management.</p> <p>The application has not demonstrated compliance with the provisions of Chapter 3 the SEPP (Biodiversity and Conservation) 2021.</p>
SEPP (Housing) 2021	<p><u>Chapter 3: Diverse Housing</u></p> <p>The application seeks approval for a caravan park. A caravan park is subject to the provisions of Part 9 of the State Environmental Planning Policy (Housing) 2021.</p> <p>As the application is recommended for refusal due to the absence of Owner's Consent and additional substantive issues, a comprehensive assessment has not been undertaken with respect to SEPP (Housing) 2021.</p> <p>Notwithstanding the above, it is noted that pursuant to Section 133(a), the following is a matter that must be considered before granting development consent:</p> <p style="text-align: center;"><i>whether, because of its location or character, the land concerned is particularly suitable for use as a caravan park for tourists or for long-term residence</i></p> <p>For the reasons detailed in this report, the site is not considered suitable for use as a caravan park.</p> <p>The application has not demonstrated compliance with the provisions of Part 9 of the SEPP (Housing) 2021, including but not limited to the suitability of the site for a caravan park.</p>
SEPP (Industry and Employment) 2021	<p><u>Chapter 3: Advertising and Signage</u></p> <p>Based on the submitted material, signage does not form part of the application.</p>
SEPP (Resilience & Hazards) 2021	<p><u>Chapter 2: Coastal Management</u></p> <p>The subject site is mapped as being partially within a Coastal Wetland and a Coastal Wetland Proximity Area, with the wetland area located in the northeastern corner of the site and the proximity area extending along the northeastern and eastern boundaries. The application acknowledges that no physical development works are proposed within the mapped Coastal Wetland itself. Additionally, the site falls within both the Coastal Environment Area and Coastal Use Area.</p>

Section 2.8: Development on land in proximity to coastal wetlands or littoral rainforest

Pursuant to Section 2.8(1), development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on the following:

- (a) *the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or*
- (b) *the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.*

The application has failed to provide sufficient information to address the impacts of the development. A specific hydrologic impact assessment is required to determine the health, integrity and function of receiving area of the Coastal Wetland. Insufficient information has been provided to assess the impact of the development having regard for potential changes in water quality or water quantity, wetland inundation times and alteration to catchment flows.

Section 2.10: Development on land within the coastal environment area

Pursuant to Section 2.10(1), development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:

- (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
- (b) *coastal environmental values and natural coastal processes,*
- (c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
- (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
- (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
- (f) *Aboriginal cultural heritage, practices and places,*
- (g) *the use of the surf zone.*

Further, pursuant to Section 2.10(2), consent must not be granted to development on land to which this section applies unless the consent authority is satisfied that:

- (a) *the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or*
- (b) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
- (c) *if that impact cannot be minimised—the development will be managed to mitigate that impact.*

	<p>Components of the development including the secondary emergency egress road (required for bushfire purposes) proposed to connect to Tom Merchant Drive which is located within land mapped as being a Coastal Environment Area. Insufficient information has been provided to:</p> <ul style="list-style-type: none"> • Confirm that all ecological values within the impact area have been adequately identified; • Demonstrate that there will be no significant impact on the ecological or hydrological integrity of the nearby Coastal Wetland; and • Establish that the impact has been avoided, or if unavoidable, that it has been appropriately minimised or mitigated. <p>The application has not demonstrated compliance with the provisions of Chapter 2 of the SEPP (Resilience & Hazards) 2021.</p> <p><u>Chapter 4: Remediation of Land</u></p> <p>Section 4.6 requires consent authorities to consider whether the land is contaminated, and if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out.</p> <p>The application was submitted with a Preliminary & Detailed Site Investigation prepared by Qualtest Laboratory, dated 12 April 2024. The investigation identified a range of potentially contaminating land uses and activities, including fuel storage tanks, farm machinery sheds, stockpiled waste, filled areas, waste pits, sugar cane farming, and chemical storage. Soil sampling further revealed elevated levels of zinc and asbestos.</p> <p>While the investigation concludes that the site could be made suitable for the proposed caravan park, it does so on the condition that a Remediation Action Plan is prepared and implemented.</p> <p>In accordance with Section 4.6(1)(c), development consent cannot be granted unless the consent authority is satisfied that the required remediation will occur prior to the site being used for the intended purpose.</p> <p>A Remediation Action Plan was not submitted with the application and as such consideration cannot be given to whether the land will be adequately remediated.</p> <p>The application has not demonstrated compliance with the provisions of Chapter 4 the SEPP (Resilience & Hazards) 2021.</p>
<p>SEPP (Transport and Infrastructure) 2021</p>	<p><u>Section 2.48: Determination of development applications—other development</u></p> <p>Section 2.48 applies to development carried out in proximity to electrical infrastructure. The application has identified that the development will</p>

	<p>require works within proximity of existing overhead powerlines. Pursuant to Section 2.48(2), before determining a development application, the consent authority must give written notice to the electricity supply authority for the area in which the development is to be carried out, inviting comments about potential safety risks, and take into consideration any response.</p> <p>The application was referred to Essential Energy who did not raise any objections to the proposal however noted that that a <i>“clearance of 20m is required from the existing High Voltage & Low Voltage Network located on the site”</i>.</p> <p><u>Section 2.122: Traffic-generating development</u></p> <p>This section requires consideration of certain matters relating to development which is deemed to be traffic-generating. Before determining a development application, the consent authority must give written notice to Transport for NSW and take into consideration any submission received, the accessibility of the site and any potential traffic safety, road congestion or parking implications associated with the development.</p> <p>Council referred the application to Transport for NSW who rejected the referral noting that the <i>“proposed development does not appear to meet the numerical criteria under Schedule 3 of the SEPP (Transport and Infrastructure) to trigger a referral under section 2.122”</i>.</p>
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Tweed Local Environmental Plan 2000

A small portion of the site, located along the southern boundary, is zoned 1(a) Rural and 1(B2) Agricultural Protection under the Tweed Local Environmental Plan 2000 (TLEP 2000). The application proposes works within the 1(a) zoned land to facilitate road upgrades and access via Cudgera Creek Road. These works have been characterised by the applicant as a ‘Road’, which is a permissible use with consent in the 1(a) zone under the TLEP 2000.

The majority of the development footprint falls within land zoned under the Tweed Local Environmental Plan 2014. Given the recommendation for refusal due to the absence of Owner's Consent and other additional substantive issues, a detailed assessment of the proposal against the provisions of the TLEP 2000 has not been undertaken.

Tweed Local Environmental Plan 2014

The subject site is predominantly zoned RU1 and RU2 and as such the primary local environmental plan applying to the site is the Tweed Local Environmental Plan 2014 (TLEP 2014).

Consideration of the relevant Clauses of the TLEP 2014 is provided below.

Clause	Matters for Consideration
1.2 Aims of the Plan	As a result of the matters raised in this report, the application has failed to demonstrate that the development is consistent with the following Aims of the Plan including but not limited to the following:

	<ul style="list-style-type: none"> • to give effect to the desired outcomes, strategic principles, policies and actions contained in the Council's adopted strategic planning documents • 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 • to conserve or enhance the biological diversity, scenic quality and geological and ecological integrity of Tweed • to conserve or enhance areas of defined high ecological value • to provide special protection and suitable habitat for the recovery of the Tweed coastal Koala <p>The application is inconsistent with Clause 1.2 of the TLEP 2014.</p>
<p>2.3 Zone objectives and Land Use Table</p>	<p><u>Characterisation</u></p> <p>In accordance with the submitted application, the proposed development is for a 'caravan park'. Under the TLEP 2014, a caravan park is defined as follows:</p> <p><i>caravan park</i> means an area of land, with access to communal amenities, used for the installation or placement of caravans, or caravans and other moveable dwellings, but does not include farm stay accommodation.</p> <p>Insufficient information has been provided to determine whether the development as proposed is appropriately characterised as a caravan park. From the information submitted, it is clear the predominant use of the land is for the installation of self-contained moveable dwellings associated with the 276 long term sites, as opposed to use of the land for the 12 short term sites. The dominance of the land being used for to accommodate moveable dwellings suggests the purpose of the development could also be defined as a 'manufactured homes estate' or another form of residential accommodation such as 'multi dwelling housing'.</p> <p>The application has also identified that the development is for the purposes of a 'road' as a result of the road upgrade and access associated with Johansons Road. Under the TLEP 2014, a road is defined as follows:</p> <p><i>road</i> means a public road or a private road within the meaning of the Roads Act 1993, and includes a classified road.</p> <p>As the application is recommended for refusal due to the absence of Owner's Consent and additional substantive issues, further consideration has not been given to characterisation of the development.</p> <p><u>Permissibility</u></p> <p>The western portion of the site is zoned RU1 Primary Production and the eastern portion of the site is zoned RU2 Rural Landscape under the TLEP 2014.</p>

	<p>Pursuant to the Land Use Table, caravan parks are permissible in the RU2 zone, however, are prohibited in the RU1 zone.</p> <p>The application identifies that the development footprint of the caravan park is wholly located within the RU2 portion of the subject site.</p> <p>However, it is noted the development is proposed to be serviced by an on-site Wastewater Treatment System comprising of a Wastewater Treatment Plant, Effluent Storage Lagoons (for wet weather storage) and Effluent Dispersal Areas.</p> <p>Whilst the Wastewater Treatment Plant and Effluent Storage Lagoons are located within the RU2 zoned land, the area proposed to accommodate the Effluent Dispersal Areas is located within the RU1 zoned land.</p> <p>It is considered that the Effluent Dispersal Areas are a critical and integral component of the proposed Wastewater Treatment System and are essential to its operation. As such, the Effluent Disposal Areas are considered to be ancillary development to the caravan park. Caravan parks are prohibited in the RU1 zone. The development located within the RU1 zoned land is inconsistent with the zoning provisions of the TLEP 2014.</p> <p>Council has obtained its own legal advice which is contained in Attachment D.</p> <p><u>Zone Objectives</u></p> <p><i>Zone RU1 - Primary Production</i></p> <ul style="list-style-type: none"> <i>To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.</i> <i>To encourage diversity in primary industry enterprises and systems appropriate for the area.</i> <i>To minimise the fragmentation and alienation of resource lands.</i> <i>To minimise conflict between land uses within this zone and land uses within adjoining zones.</i> <i>To protect prime agricultural land from the economic pressure of competing land uses.</i> <p><i>Zone RU2 - Rural Landscape</i></p> <ul style="list-style-type: none"> <i>To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.</i> <i>To maintain the rural landscape character of the land.</i> <i>To provide for a range of compatible land uses, including extensive agriculture.</i> <i>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.</i> <p>The proposal is not considered to be consistent with objectives of the RU1 zone and RU2 zone. The proposed large scale caravan park is not compatible with the existing agricultural activities and rural character of the land and locality. The increased presence of occupants, noise, lighting, and traffic may disrupt nearby agricultural operations and result in land use</p>
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	<p>conflicts. The development requires substantial modification of the natural landform as a result of bulk earthworks and vegetation clearing, resulting in associated environmental and visual impacts.</p> <p>The application is inconsistent with Clause 2.3 of the TLEP 2014.</p>
2.7 Demolition requires development consent	In accordance with Clause 2.7, the application seeks development consent for demolition works required to facilitate the development.
4.3 Height of buildings	<p>In accordance with Clause 4.3, the site is mapped as having a maximum height limit of 9 metres.</p> <p>The application indicates that the proposed structures including but not limited to the community facilities, shed, fencing and lighting will not exceed 9 metres in height. Whilst the proposal may comply with the provisions of Clause 4.3, without detailed plans of the relevant structures, a proper assessment is unable to be undertaken.</p>
5.10 Heritage conservation	<p>The objectives of Clause 5.10 include the conservation of Aboriginal objects and Aboriginal places of heritage significance.</p> <p>The subject site is mapped as being within an area of predictive aboriginal heritage area under the Aboriginal Cultural Heritage Management Plan 2018. The application was submitted with an Aboriginal Cultural Heritage Assessment prepared by McCardle Cultural Heritage Pty Ltd and dated 2 May 2024.</p> <p>The application was referred to the Tweed Byron Aboriginal Land Council for comment, however, no response has been received to date.</p>
5.21 Flood planning	<p>In accordance with Clause 5.21, in deciding whether to grant development consent on land to which this clause applies, the consent authority must consider the following matters:</p> <ul style="list-style-type: none"> <i>(a) the impact of the development on projected changes to flood behaviour as a result of climate change,</i> <i>(b) the intended design and scale of buildings resulting from the development,</i> <i>(c) whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood,</i> <i>(d) the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion.</i> <p>The subject site is affected by the 1% AEP flood and PMF and has a range of flood levels and gradients due to the topography. The proposed accommodation sites and reconstructed access road are all designed to be</p>

	<p>at the PMF or above. The site is mainly designated as low flow, although areas of high flow are located north and south of the property. The intersection of Johansons Road and Cudgera Creek Road and the secondary emergency egress access proposed via Tom Merchant Drive are identified as high flow.</p> <p>A Flood Impact Assessment prepared by BMT dated 18 April 2024 was submitted with the application. A review has identified that the Flood Impact Assessment fails to address various key matters.</p> <p>The application has not demonstrated compliance with the provisions of Clause 5.21 of the TLEP 2014.</p>
<p>5.22 Special flood considerations</p>	<p>The subject proposal is for the use of a caravan park which is an identified as a sensitive and hazardous land use under Clause 5(b).</p> <p>In accordance with Clause 3, development consent must not be granted to development on land to which this clause applies unless the consent authority has considered whether the development:</p> <ul style="list-style-type: none"> <i>(a) will affect the safe occupation and efficient evacuation of people in the event of a flood, and</i> <i>(b) incorporates appropriate measures to manage risk to life in the event of a flood, and</i> <i>(c) will adversely affect the environment in the event of a flood.</i> <p>The application was submitted with a Flood Response Assessment Plan prepared by BMT and dated 7 May 2024. In the event of flood emergency, shelter in place is proposed as all accommodation sites are above the PMF. Further, the proposed access via Johansons Road is proposed to be raised to the required PMF level. The Flood Response Assessment Plan has identified that the community centre facilities will be the evacuation centre for the required shelter in place. The assessment has not identified any issues in relation to compliance with the provisions of Clause 5.22 of the TLEP 2014.</p>
<p>7.1 Acid sulfate soils</p>	<p>The subject site has varying topography and includes Class 2, 3 and 5 acid sulfate soils. A large proportion of the site is low-lying.</p> <p>The Statement of Landscape Design prepared by Urbis dated May 2024 and the architectural drawings prepared by Towndrow Architects dated 24 May 2024 indicate that the accommodation sites and ancillary facilities are located within the elevated areas of the site mapped Class 5 acid sulfate soils. The road and services including onsite Wastewater Treatment System will be constructed/installed in areas outside of the Class 5 acid sulfate soils.</p> <p>The application refers to an Acid Sulfate Soil Management Plan however no such plan appears to have been submitted for consideration.</p> <p>The application has not demonstrated compliance with the provisions of Clause 7.1 of the TLEP 2014.</p>
<p>7.2</p>	<p>Pursuant to Clause 7.2(3), in deciding whether to grant development</p>

<p>Earthworks</p>	<p>consent, the consent authority must consider the following matters:</p> <ul style="list-style-type: none"> <i>(a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,</i> <i>(b) the effect of the development on the likely future use or redevelopment of the land,</i> <i>(c) the quality of the fill or the soil to be excavated, or both,</i> <i>(d) the effect of the development on the existing and likely amenity of adjoining properties,</i> <i>(e) the source of any fill material and the destination of any excavated material,</i> <i>(f) the likelihood of disturbing relics,</i> <i>(g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,</i> <i>(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development,</i> <i>(i) the proximity to, and potential for adverse impacts on, any heritage item, archaeological site, or heritage conservation area.</i> <p>The Concept Engineering Plans prepared by AWJ Johnston and dated 24 May 2024 indicates that fill will need to be imported to facilitate the proposed earthworks required to establish a level development footprint. The quantity of fill, haulage route and/or source of fill material is unknown.</p> <p>The development proposes significant earthworks either within or in very close proximity to the Coastal Wetlands Proximity Area of the Coastal Wetlands. The application has not demonstrated that the development and associated earthworks will not have an adverse environmental impact.</p> <p>The application has not demonstrated compliance with the provisions of Clause 7.2 of the TLEP 2014.</p>
<p>7.10 Essential services</p>	<p>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:</p> <ul style="list-style-type: none"> <i>(a) the supply of water,</i> <i>(b) the supply of electricity,</i> <i>(c) the disposal and management of sewage,</i> <i>(d) stormwater drainage or on-site conservation,</i> <i>(e) suitable vehicular access.</i> <p><u>Water</u></p> <p>The application was submitted with a Reticulated Water Servicing Assessment prepared by Planit Consulting (Undated) which outlines three potential servicing options, in order of preference:</p> <ol style="list-style-type: none"> 1. Utilising capacity within the network reservoir at Koala Beach and a connection from Council's DN150 water main in Tom Merchant Drive. 2. Construction of additional storage at the Koala Beach reservoir site, utilising a connection from Council's DN150 water main in Tom Merchant Drive. 3. Construction of on-site storage, utilising a connection from Council's DN150 water main in Tom Merchant Drive.

A review of the assessment has identified the following issues in relation to water supply:

- The site is currently not connected to Council's water supply network;
- It is located outside the Development Servicing Plan (DSP) area for water supply;
- The area has not been included in Council's strategic planning for future water infrastructure;
- The Koala Beach reservoirs are only sized for existing zoned development;
- Recent investigations confirm that no spare capacity is available within the Pottsville water supply system to support unplanned development; and
- Connection to the water network would therefore compromise Council's ability to service existing and future DSP-zoned development.

Electricity

The application was submitted with Electrical Review & Supply Strategy prepared by Power Solutions and dated 28 May 2024.

As the application is recommended for refusal due to the absence of Owner's Consent and additional substantive issues, further consideration has not been given to electricity supply to the proposed development.

Disposal and Management of Sewage

As previously addressed, under Clause 2.3 - Zone objectives and Land Use Table, the proposed Wastewater Treatment System includes Effluent Dispersal Areas located within the land zoned RU1 where caravan parks are prohibited. Refer to legal advice provided in **Attachment D**.

Further to the above, the application was submitted with an Effluent Management Plan prepared by True Water Australia and dated 4 June 2024.

Council engaged external consultants to undertake a review of the Effluent Management Plan which is provided at **Attachment E**.

The advice concludes that the Effluent Management Plan has failed to provide sufficient information to address the likely risk associated with the development, and in particular the proposed disposal onto land which is deemed to be unsuitable for that purpose. Further, that there is a high risk of detrimental environmental and social impacts arising from the operation of an onsite wastewater management system.

Stormwater Drainage or On-site Conservation

The application was submitted with a Stormwater Management Report prepared by ADW Johnston and dated 10 May 2024. The Stormwater Management Report proposes on-site detention including a pit and pipe system draining into detention/bioretention basins. Outlets from the basins will drain to the north and south of the site to Cudgera Creek.

	<p>The assessment has not identified any issues in relation to adequate stormwater arrangements as required by Clause 7.10 of the TLEP 2014.</p> <p><u>Suitable Vehicular Access</u></p> <p>The proposed development relies on vehicular access from Cudgera Creek Road, which is located within Council owned road reserve. As such, the applicant sought Owner's Consent from Tweed Shire Council. This request was considered and refused by Council.</p> <p>The application has not demonstrated compliance with the provisions of Clause 7.10 of the TLEP 2014 particularly in relation to the supply of water, the disposal and management of sewage and suitable vehicular access.</p>
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(b) Other Statutory Controls

The following additional statutory controls are relevant to the proposal.

Instrument	Matters for Consideration
Biodiversity Conservation Act 2016	<p>Section 7.7(2) of the BC Act prescribes '<i>(i)f the proposed development is likely to significantly affect threatened species, the application for development consent is to be accompanied by a biodiversity development assessment report</i>'.</p> <p>The application was submitted with a Biodiversity Development Assessment Report prepared by Biodiversity Australia and dated 29 May 2024 (BDAR). A review of the BDAR has identified several key deficiencies:</p> <ul style="list-style-type: none"> • The BDAR was not prepared in accordance with the Biodiversity Assessment Method 2020 as required by Section 6.12 of the BC Act. • The BDAR was not submitted to Council as a Case Party via the Biodiversity Offsets and Agreement Management System. • The BDAR lacks the required certification under Section 6.15 of the BC Act. • The BDAR does not comply with the legislative requirements, and as such, the obligations under Section 7.7(2) of the BC Act have not been fulfilled. • The minimum information as listed in Appendix K of the Biodiversity Assessment Method 2020 such as digital mapping shapefiles have not been made available to Council. • No plot field datasheets are provided in the BDAR. • The BDAR provides an Inadequate assessment under Section 7.16(2) regarding Serious and Irreversible Impact entities. • Landscape features (e.g., waterways, wetlands, riparian buffers) have not been mapped as required by Biodiversity Assessment Method 2020.

	<ul style="list-style-type: none"> • Vegetation mapping has been provided at a scale (1:12000) that is difficult to analyse. The Biodiversity Assessment Method 2020 recommends a scale of 1:1000 or finer. • Inconsistencies in Plant Community Type assignments and omission of vegetation units. • Threatened Ecological Communities are not distinguished in vegetation mapping. • Incomplete flora survey along Cudgera Creek riparian corridor. • Threatened flora locations not accurately shown on appropriately scaled maps. • Prescribed impacts such as water quality, hydrology, and habitat connectivity not adequately addressed. • No assessment of bridge upgrade and edge effects on Cudgera Creek or implications for threatened species. • No hydrologic impact assessment on receiving waterways or wetlands addressing water quality, flow paths, or inundation. <p>The application has not demonstrated compliance with the provisions of the BC Act and Biodiversity Conservation Regulation 2017.</p>
<p>Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2021</p>	<p>The Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2021 sets out standards and requirements for the establishment, operation, and management of manufactured home estates, caravan parks, camping grounds and moveable dwellings in New South Wales.</p> <p>As the application is recommended for refusal due to the absence of Owner's Consent and additional substantive issues, a comprehensive assessment has not been undertaken with respect to the Regulation.</p> <p>Notwithstanding the above, the assessment has identified the following issues having regard to the provisions of Part 3 Caravan Parks, Clauses 101 and 102:</p> <p><u>101 Water supply</u></p> <p>(1) <i>A caravan park or camping ground must be—</i></p> <p>(a) <i>connected to a mains water supply, or</i></p> <p>(b) <i>provided with an alternative water supply service as specified in the approval.</i></p> <p>(2) <i>A dwelling site must be connected to the water supply service for the caravan park or camping ground.</i></p> <p>(3) <i>Each water supply connection must—</i></p> <p>(a) <i>be located within 30 metres of the 4 camp sites, and</i></p> <p>(b) <i>include a standpipe and hose tap.</i></p> <p>(4) <i>The water supply service must comply with—</i></p> <p>(a) <i>the <u>Plumbing and Drainage Act 2011</u> and the regulations made under that Act, and</i></p> <p>(b) <i>the requirements of a relevant statutory body.</i></p>

	<p>(5) <i>The water supplied for human consumption or domestic purposes must comply with the Australian Drinking Water Guidelines 6 published in October 2011 by the National Health and Medical Research Council.</i></p> <p><u>102 Sewerage</u></p> <p>(1) <i>A caravan park or camping ground must be –</i></p> <p style="padding-left: 40px;">(a) <i>connected to a main sewer, or</i></p> <p style="padding-left: 40px;">(b) <i>provided with an alternative sewage disposal system as specified in the approval.</i></p> <p>(2) <i>A long-term site must be connected to the sewage disposal system for the caravan park or camping ground.</i></p> <p>The caravan park and associated accommodation sites cannot connect to Council's water network and the proposed onsite sewage management and disposal is not considered suitable.</p> <p>The application has not demonstrated compliance with the provisions of Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2021 particularly in relation to the supply of water and the disposal and management of sewage.</p>
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(c) Section 4.15 (1)(a)(ii) - Provisions of any Proposed Instruments

There are no draft SEPP's or LEP's that apply to the proposal.

(d) Section 4.15(1)(a)(iii) - Provisions of any Development Control Plan

The Tweed Development Control Plan 2008 (DCP) is applicable to this application.

Section	Matters for Consideration
A2 Site access and parking	<p><u>Access</u></p> <p>Issues with access and the absence of Owner's Consent has been addressed elsewhere in this report.</p> <p><u>Parking</u></p> <p>In accordance with DCP A2, the applicable parking provisions are outlined in the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2000. It is noted that the current regulation is the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2021.</p>

	<p>96 Resident parking</p> <ol style="list-style-type: none"> (1) A caravan park or camping ground must contain at least 1 resident parking space for each dwelling site or camp site. (2) The parking space for a dwelling site or camp site may be on-site or off-site. (3) An off-site parking space must be marked to identify the dwelling site or camp site to which it relates. Example— An off-site space may marked by line marking, marker pegs or other similar markings. (4) An off-site parking space for a dwelling site or camp site must be in the location specified in the approval. (5) An off-site parking space must have minimum dimensions of— <ol style="list-style-type: none"> (a) for angle parking—5.4 metres by 2.5 metres, and (b) otherwise—6.1 metres by 2.5 metres. <p>97 Visitor parking</p> <ol style="list-style-type: none"> (1) A caravan park or camping ground must contain at least 1 visitor parking space— <ol style="list-style-type: none"> (a) for every 10 long-term sites in the caravan park or camping ground, and (b) for every 20 short-term sites in the caravan park or camping ground, and (c) for every 40 camp sites in the caravan park or camping ground, and (d) for a remaining part, if any, of a number of sites specified in paragraphs (a)–(c). Example— A caravan or camping ground containing 90 short-term sites must contain at least 5 visitor parking spaces. (2) At least 4 visitor parking spaces must be provided for a caravan park or camping ground. (3) Each parking space must have minimum dimensions of— <ol style="list-style-type: none"> (a) for angle parking—5.4 metres by 2.5 metres, or (b) otherwise—6.1 metres by 2.5 metres. (4) Visitor parking spaces must be clearly identified. <p>98 Visitor parking for people with disabilities</p> <ol style="list-style-type: none"> (1) A caravan or camping ground must contain— <ol style="list-style-type: none"> (a) at least 1 visitor parking space for people with a disability (a <i>disabled parking space</i>), or (b) if the caravan or camping ground contains 100 sites or more—at least 1 additional disabled parking space for— <ol style="list-style-type: none"> (i) the first 100 sites, and (ii) every further 100 sites, and (iii) a remaining part, if any, of 100 sites. Example— A caravan or camping ground containing 235 sites must contain at least 3 disabled parking spaces. <p>The application proposes that each long term and short term site will have 1 parking space.</p> <p>With regard to visitor parking, 27.6 parking spaces are required for the 276 long term sites and 0.6 parking spaces are required for the 12 short term sites, a total of 28.2 parking spaces. The proposal includes the provision of 84 visitor parking spaces.</p> <p>There will be 4 accessible spaces which complies with the requirements.</p> <p>Whilst the proposal may comply with the minimum dimension requirements, however, plans have not been provided.</p>
A3	<u>Emergency Response Provisions</u>

Development of flood liable land	<p>Section A3.2.6 requires new caravan park development and moveable dwelling sites to have permanent high level road evacuation routes to land above PMF level.</p> <p>The development proposes shelter in place as all sites in the development are above the PMF. The application was submitted with Flood Response Assessment Plan prepared by BMT and dated 7 May 2024. The community facility building is proposed to be the excavation centre to shelter in place. It is also noted that each of the individual sites are all above the PMF. The Johansons Road access is proposed to be raised to the PMF.</p> <p>It is considered that the emergency response provisions as required by DCP A3 have been adequately addressed.</p>
A13 Socio-economic impact assessment	<p>The application was submitted with a Socio-Economic Impact Assessment prepared by Hill PDA Consulting and dated 14 May 2024.</p> <p>As the application is recommended for refusal due to the absence of Owner's Consent and additional substantive issues, a comprehensive assessment has not been undertaken with respect to DCP A13.</p>
A15 Waste Minimisation and Management	<p>The application was submitted with a Preliminary Waste Minimisation and Management Plan prepared by Planit Consulting.</p> <p>As the application is recommended for refusal due to the absence of Owner's Consent and additional substantive issues, a comprehensive assessment has not been undertaken with respect to DCP A15.</p>
A19 Biodiversity and Habitat Management	<p>Section 7.13(6) of the BC Act enables Council's to determine their own standards to avoid or minimise biodiversity impacts. The development envelope controls (DECs) of DCP 19 sets out the avoid and minimise requirements.</p> <p>The proposal fails to demonstrate compliance with key DECs relating to the avoidance and minimisation of biodiversity impacts. The assessment has identified the following issues:</p> <ul style="list-style-type: none"> • Failure to avoid direct impacts on red flagged biodiversity values, including: <ul style="list-style-type: none"> ○ Removal of threatened species and ecological communities; ○ Lack of ecological buffers or setbacks from identified red flagged areas, including Endangered Ecological Communities (EECs) and mapped waterways; ○ Proposed filling of first-order waterways and alteration of existing hydrological regimes; ○ Inadequate response to the requirements for larger-scale development not involving subdivision, specifically: <ul style="list-style-type: none"> ▪ DEC C9: All red flagged areas and associated ecological buffers within 200m of the development envelope must be protected in perpetuity through a statutory protection mechanism; and

	<ul style="list-style-type: none"> ▪ DEC C10: All areas protected under DEC C9 must be managed in perpetuity. • Insufficient ecological buffer to Cudgera Creek: <ul style="list-style-type: none"> ○ As a fifth-order stream, a minimum 40-metre ecological buffer is required. The proposed 30-metre buffer is inadequate, particularly on a greenfield site. • Lack of detail and assessment regarding: <ul style="list-style-type: none"> ○ The ecological value and function of existing drainage channels proposed for stormwater discharge; ○ The integration of agricultural buffers recommended in the Land Use Conflict Risk Assessment with required ecological buffers, particularly where buffer areas to the southeast and northeast of the site overlap. • Failure to address impacts of the proposed secondary emergency egress road, particularly: <ul style="list-style-type: none"> ○ Disturbance to the ecological integrity and function of the Cudgera Creek riparian zone and associated floodplain habitat due to earthworks and construction activities. • No Arboricultural Impact Assessment: <ul style="list-style-type: none"> ○ Trees identified for retention in proximity to development works have not been assessed in accordance with AS4970-2009 – Protection of Trees on Development Sites. • No consideration given to the Koala Beach Wildlife Protection Area: <ul style="list-style-type: none"> ○ The proposed emergency access via Tom Merchant Drive does not address existing domestic animal restrictions associated with the wildlife protection area. <p>The application has not demonstrated compliance with the aims, objectives and principles of the DCP A19.</p>
<p>B21 Pottsville Locality Based Development Code</p>	<p>The Pottsville Locality Plan is an overarching strategic plan for the area.</p> <p>As the application is recommended for refusal due to the absence of Owner's Consent and additional substantive issues, a comprehensive assessment has not been undertaken with respect to DCP B21.</p> <p>Notwithstanding the above, as addressed in DCP 21, there are various key features that contribute to the physical character of Pottsville including but not limited to:</p> <ul style="list-style-type: none"> • <i>A pattern of distinct residential areas separated by green buffers including wetland and bushland areas, wildlife corridors and rural lands.</i> • <i>Floodplains feeding off a rolling topography, resulting in the presence of several high points on the periphery of the area that serve to provide a visual backdrop from most locations.</i> • <i>A significant and continuing sugar cane industry, occupying a large proportion of the northern part of the study area</i> <p>It is considered that the development would effectively 'link' the Seabreeze Estate and Koala Beach Estate thereby breaking the existing precinct character of the residential estates being separated by 'green buffers'. The significant earthworks as proposed would effectively level the existing rolling topography of the site with significant landscape and visual character</p>

	<p>implications. The proposed urban development would take away from the existing agricultural practices which include sugar cane farming and grazing across this property.</p> <p>The application has not demonstrated compliance with DCP B21.</p>
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(e) Section 4.15(1)(a)(iia) – Planning agreements under Section 7.4 of the EP&A Act

There have been no planning agreements entered into and there are no draft planning agreements being proposed for the site.

(f) Section 4.15(1)(a)(iv) - Provisions of Regulations

Clause 61(1) - Applications for demolition

The application proposes demolition of various structures. The assessment has not identified any issues of concern in relation to the Regulations. It is noted that a demolition plan has not been submitted.

Clause 62 - Fire Safety Considerations

The application is not for a change of use to an existing building.

Clause 64 - Buildings to be upgraded

The application does not require existing buildings to be upgraded.

3.2 Section 4.15(1)(b) - Likely Impacts of Development

The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality must be considered. In this regard, potential impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls outlined above and the Key Issues section below.

The consideration of impacts on the natural and built environments includes the following:

- Context and Setting

The proposed caravan park is not considered appropriate for the context and setting of the site and locality. The proposal is for a large-scale residential use contradictory to a landscape that is suitable for rural and agricultural land uses. The development would result in a significant alteration of the rural character of the site as a result of bulk earthworks, tree removal, clearing of vegetation, access bridge and road networks. It is considered the proposal risks impacting the contiguity of agricultural uses. The development is not conducive to the natural setting, zoning or ecological features present within the Cudgera Creek locality.

- Access and Traffic

In relation to access, as detailed in this report, the proposed access requires Owner's Consent from Council which has been refused. As such, the proposed access cannot be achieved.

The application was submitted with a Traffic Impact Assessment prepared by Bitzios Consulting and dated 8 April 2024. A review of the Traffic Impact Assessment has determined that insufficient information has been provided in relation to various access and traffic related matters which is required to adequately consider the likely impacts of the development.

- Utilities

The application has failed to demonstrate that the development can be supplied by water or serviced by an acceptable on-site sewage system.

- Land Use Conflict

The site is mapped as being Regionally Significant Farmland.

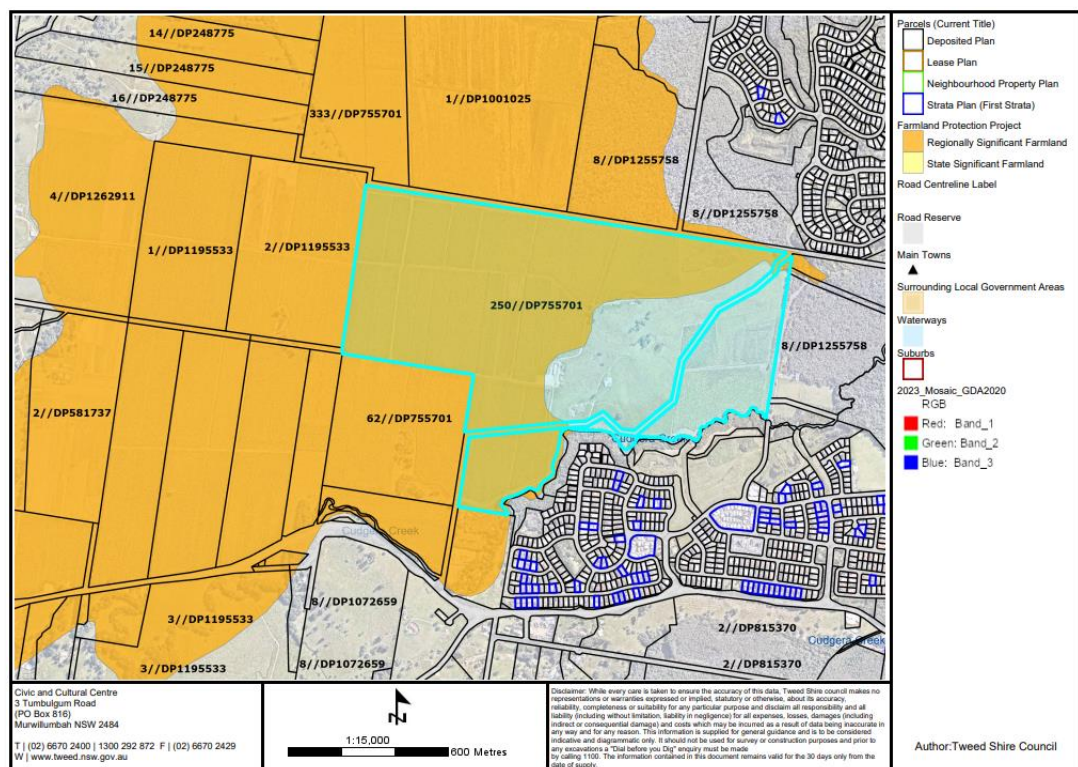


Figure 18: GIS Map with Regionally Significant Farmland overlay (Source: Tweed Shire Council)

The application was submitted with a Land Use Conflict Risk Assessment (LUCRA) prepared by Gilbert and Sutherland and dated 11 April 2024. The assessment has identified that insufficient information has been included in the LUCRA in relation to impacts on surrounding land owners, assessment of agricultural hazards, traffic impacts and odour related matters which is required to adequately consider the likely impacts of the development in this context.

- Visual Impact

Tweed Shire Council adopted the Scenic Landscape Protection Policy on 6 June 2024, which includes a Visibility Map identifying areas of high scenic sensitivity. The subject site is located on a natural rise/knoll within a rural landscape and falls within an area categorised as having visibility from 10 or more public viewing locations, classified as 'red' on the map. These red

areas represent only 7% of the Tweed Shire and are considered to be some of the most visually prominent landscapes in the region.

The application was submitted with a Scenic Impact Assessment prepared by Urbis and dated 22 April 2024. A review has identified the following issues:

- The submitted Scenic Impact Assessment categorises the land as being defined as 'rural hills & valleys'. The proposal is located in a visually exposed area with undulating topography, which contributes significantly to the character of the broader rural setting.
- In accordance with the submitted Scenic Impact Assessment, the impact on view 05B taken from Pottsville Road, confirms the extent of the proposed visible impacts on the landscape. This is considered a significant adverse impact in the rural landscape and not consistent with the objectives of the Scenic Landscape Protection Policy.
- In accordance with the submitted Scenic Impact Assessment, the impact on view 09 Tom Merchant Drive, the local viewshare is highly impacted. Therefore, the works are highly undesirable and do not align with the Scenic Landscape Protection Plan objectives.
- Sole reliance on boundary landscaping and/or screening is not acceptable given the inappropriateness of the development design and layout and the visual impact on the established visual character of the area.
- The proposed development will impact on the overall scenic quality of the surrounding locality, particularly as enjoyed by passengers of vehicles traversing the local scenic drives. It is likely that any proposed mitigation (especially via landscaping) will not comply with Section 9 of the Scenic Management Principles.

- Flora and Fauna

The proposal has failed to adequately address provisions of the BC Act, SEPP (Resilience and Hazards) 2021, SEPP (Biodiversity and Conservation) 2021, Tweed Coast Comprehensive Koala Plan of Management 2020 and DCP A19. The application has failed to demonstrate that the development will not result in an unacceptable ecological impact.

- Contamination

The potential for contaminated land is considered in the assessment under the SEPP (Resilience and Hazards) 2021 and the assessment identified that insufficient information was provided to determine whether the land will be adequately remediated.

- Natural Hazards

Flooding

The site is affected by the 1% AEP flood and PMF. A Flood Impact Assessment prepared by BMT and dated 18 April 2024 was submitted with the application. The Flood Impact Assessment fails to address various key matters required to adequately consider the likely flood impacts of the development.

Bushfire

The application was submitted with a Bushfire Threat Assessment prepared by AEP and dated May 2024. The application was referred to NSW Rural Fire Services (RFS) under Section 100B of the Rural Fires Act 1997. RFS have advised that the application cannot be

supported noting that the further information would be required to undertake any further assessment.

The submitted Bushfire Threat Assessment has identified that secondary emergency egress access is required which is proposed to be via Tom Merchant Drive. Tom Merchant Drive is mapped as Community Land and is not Council road reserve. Access to and from the development via Community Land is not supported. Tom Merchant Drive is required to be classified as Council road reserve prior to any approval of the application which relies on this secondary access. Access easements or the like for private purposes are generally not provided over Community Land and would need to be enabled by a plan of management.

3.3 Section 4.15(1)(c) - Suitability of the site

The site is considered to be unsuitable for the development. The density of the residential land use is of a scale that is contrary to the rural character of the site. The proposal has not been designed having regard to the topography of the site and will require significant earthworks the result of which will substantially alter the existing rural landscape. The site cannot be adequately serviced with water supply. The proposed on-site sewage management is not considered suitable. The development is likely to cause various environmental and ecological impacts. The development could have a detrimental impact on the adjoining agricultural activities occurring on site.

3.4 Section 4.15(1)(d) - Public Submissions

These submissions are considered in Section 4 of this report.

3.5 Section 4.15(1)(e) - Public interest

The proposed development is not considered to be an appropriate outcome for the site, nor is it considered to be in the public interest.

4. REFERRALS AND SUBMISSIONS

4.1 Agency Referrals and Concurrence

The application has been referred to various agencies for comment/concurrence/referral as required by the EP&A Act and outlined below in Table 5. The outstanding issues raised by Agencies are considered in the Key Issues section of this report.

Table 5: Concurrence and Referrals to agencies

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
Concurrence Requirements (s4.13 of EP&A Act)			
Transport for NSW	Section 2.122 SEPP (Transport and Infrastructure) 2021	Agency advised: <i>"The proposed development does not appear to meet the numerical criteria under Schedule 3 of the SEPP (Transport and Infrastructure) to trigger a referral under section 2.122"</i> .	YES

Essential Energy	Section 2.48(2) SEPP (Transport and Infrastructure) 2021	No objection. General comments provided.	YES
Referral/Consultation Agencies			
Tweed Byron Aboriginal Land Council	Aboriginal Cultural Heritage Management Plan 2018 (ACHMP)	Comments outstanding.	TBC
Integrated Development (S 4.46 of the EP&A Act)			
NSW RFS	Section 100B - <i>Rural Fires Act 1997</i> Special Bushfire Protection Purpose	Application not supported in its current form and General Terms of Approval not issued. Outstanding matters required to be addressed. Correspondence from NSW RFS dated 19 September 2024 is provided at Attachment F .	NO
NSW Department of Primary Industries and Regional Development - Fisheries	General Terms of Approval pursuant to Section 201 Fisheries Management Act 1994	No objection subject to General Terms of Approval.	YES
NSW Department of Planning and Environment-Water	Controlled Activity Approval pursuant to Clause 91 of Water Management Act 2000 for works within 40m of mapped watercourse	General Terms of Approval not issued. Outstanding matters required to be addressed. Correspondence from NSW Department of Planning and Environment (Water) dated 30 September 2024 is provided at Attachment G .	NO

4.2 Council Officer Referrals

The application has been referred to various Council officers for technical review as outlined **Table 6**.

Table 6: Consideration of Council Referrals

Officer	Comments	Resolved
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Development Engineering	Matters raised in terms of requiring clarification as to technical detail have not been comprehensively addressed given the application is recommended for refusal as a result of the absence of Owner's Consent and additional substantive issues.	NO
Traffic Engineering	Request for further information: <ul style="list-style-type: none"> The Traffic Impact Assessment would be required to clarify the number of bedrooms for long-term sites, as traffic generation rates used are inconsistent. Justification would be required regarding the recommended turning treatments at the Cudgera Creek Road and Johansons Road intersection, as calculations suggest more extensive treatments are required. Details are required on parking provisions per residence and how more than one vehicle per dwelling will be accommodated. Confirmation as to the provisions for bicycle parking. Explanation as to how the proposed lockable gate at the emergency egress to Tom Merchant Drive will be managed and enforced. Redesign of the Cudgera Creek Road and Johansons Road intersection to accommodate a 19m articulated vehicle, noting that reliance on private land for sight lines is unacceptable. Submission of a design report explaining the rationale for the number of short-span bridges proposed along Johansons Road. 	NO
Building Unit	No objections.	YES
Environmental Health Unit	Request for further information: <ul style="list-style-type: none"> LUCRA: <ul style="list-style-type: none"> No evidence of consultation with surrounding land owners as required by NSW DPI LUCRA Guidelines. No assessment of increased traffic impacts from transport of 267 moveable dwellings. No consideration of potential odour impacts from the proposed onsite effluent disposal. Effluent disposal areas proposed within flood-prone land, increasing odour and pollution risk. Inconsistent buffer width figures (30m vs 40m) between LUCRA and site plans. A revised LUCRA would be required, prepared by a suitably qualified consultant, addressing all identified risks. Contaminated Land Investigation: 	NO

	<ul style="list-style-type: none"> ○ The investigation confirms contamination and recommends remediation for site suitability. ○ A Remedial Action Plan is required in accordance with NSW Guidelines for Contaminated Lands and SEPP (Resilience and Hazards) 2021. • Acid Sulfate Soils: <ul style="list-style-type: none"> ○ Acid Sulfate Soil Management Plan was referenced but not submitted. • Groundwater and Dewatering: <ul style="list-style-type: none"> ○ Query as to whether dewatering will be necessary, particularly in low-lying areas where infrastructure is proposed. 	
Waste	No objections.	YES
Sustainability and Environment Unit	<p>Not supported for the following reasons:</p> <ul style="list-style-type: none"> • The BDAR is not properly made and deemed unacceptable under the BC Act. • The proposal does not acknowledge all threatened entities present. • The proposal does not sufficiently document suitable measures to avoid and mitigate impact to threatened entities, including Serious and Irreversible Impact species. • The proposal is not consistent with DCP A19 based on impact on red flagged biodiversity values, non-compliance with ecological setback requirements, failure to demonstrate how red flagged ecological values and associated ecological buffers are to be afforded long term protection, improved and managed. • The proposal fails to adequately address and respond to the Koala Plan of Management. • The proposal has not clearly demonstrated that significant impact upon the biophysical, hydrological or ecological integrity of the adjacent coastal wetland area, or the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland area would be avoided. 	NO
Parks and Active Communities	<p>Not supported for the following reasons:</p> <ul style="list-style-type: none"> • The secondary emergency egress access proposed via Tom Merchant Drive is not supported. • Tom Merchant Drive is mapped as community land and is not road reserve. • Tom Merchant Drive would need to be classified as road reserve. 	NO

Strategic Planning and Urban Design	<p>Not supported for the following reasons:</p> <ul style="list-style-type: none"> • The scale and type of development (caravan park with 267 long-term sites and 12 short-term sites plus clubhouse) is inconsistent with the rural character and zoning objectives of the RU2 Rural Landscape zone. • The development would cause unacceptable visual intrusion, particularly from key viewpoints such as Pottsville Road and Tom Merchant Drive, contradicting the Scenic Landscape Protection Policy. • The proposal does not align with the Scenic Landscape Protection Plan or Section 9 of the Scenic Management Principles, and mitigation measures like boundary landscaping are deemed insufficient. • Proposed site-wide lighting is inappropriate for the rural setting and would negatively affect the night landscape and nearby areas. • Use of dark, prefabricated modular dwellings is not sympathetic to the rural aesthetic. Additionally, insufficient detail on individual building size, height, and location raises concerns about further visual and physical impact. • Reliance on boundary landscaping for visual screening is inadequate, especially given the development's scale and layout. • The development would diminish the scenic quality experienced by users of nearby local scenic routes. 	NO
Water and Wastewater Unit	<p>Not supported for the following reasons:</p> <ul style="list-style-type: none"> • The subject site lies outside the Tweed Shire Council's Pottsville Water Supply Development Servicing Plan (DSP) area. • The existing water network has no available capacity to support additional development beyond what has been planned within the DSP area. • Should this development proceed with a connection to Council's water supply system, it would compromise Council's ability to maintain servicing standards for both existing and future zoned development within the DSP area. • The proposal presents a significant risk to the integrity and sustainability of the Pottsville water supply scheme. 	NO
Flooding Engineer	<p>Request for further information:</p> <ul style="list-style-type: none"> • 2013 LiDAR data has been used in the Flood Impact Assessment. The Flood Impact Assessment would be required to be updated using the most recent datasets (Tweed Shire 2021 or CSIRO 2022), or the current data 	NO

	<p>must be verified as accurate and consistent with 2013 data.</p> <ul style="list-style-type: none"> • The Flood Impact Assessment does not appear to include the proposed driveway connection to Tom Merchant Drive. The engineering drawings detail embankment fill of roughly 0.5m for this road. The Flood Impact Assessment and Council's flood models show shallow breakout from Cudgera Creek to the north through this area. Concern is raised that flow obstruction here may cause local afflux in Cudgera Creek and thereby impact flood immunity for the locality. • The Flood Impact Assessment would be required to clarify whether bridge and culvert sizing has been included in the flood model to ensure proper flood conveyance. • The Flood Impact Assessment only models the development in isolation. It would be required to be updated to include a cumulative development scenario incorporating the access road. • Engineering drawings show only 400mm clearance under the bridge for flood/drainage flow. A qualified engineer would be required to confirm if this is adequate and detail the bridge's foundation type. 	
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The outstanding issues raised by Council officers are considered in the Key Issues section of this report.

4.3 Community Consultation

The proposal was notified in accordance with the Council's Community Engagement and Participation Plan 2019–2024 from Wednesday, 14 August 2024 until Wednesday, 11 September 2024.

The notification included the following:

- An advertisement in the local Council newspaper, The Tweed Link (14 August 2024);
- A sign placed on the site;
- Notification on Council's website (DA Tracker); and
- Notification letters sent to adjoining and adjacent properties.

The Council received a total of 162 unique submissions, comprising 155 objections and 7 submissions in favour of the proposal. The main issues raised in these submissions are considered in **Table 7**.

Table 7: Summary of Community Submissions

Issue	Council Comments
Site Suitability and Zoning	The site is considered unsuitable for the proposed caravan park as a result of the scale, density and nature of the development

<p>The submissions raise concerns that the proposed high-density caravan park is inappropriate for the RU2 rural zone and would drastically alter Pottsville's small coastal village character, demographics and landscape. The submissions also note the loss of productive agricultural land, the unsuitability of the proposed housing types and the potential environmental and infrastructural impacts.</p>	<p>and inconsistency with the TLEP 2014 zone objectives.</p> <p>Parts of the development are considered to be prohibited development under TLEP 2014. Refer to legal advice provided at Attachment D.</p>
<p>Visual Impact</p> <p>The submissions raise concerns about the negative visual impact of the proposed development, given its location on a prominent ridgeline resulting in the built form being highly visible from surrounding residential estates and public vantage points. The submissions also raise concern that the development will detrimentally impact the balance between residential zones, open green spaces, bushland, and mountain vistas.</p>	<p>It is considered that the development, situated on a prominent ridgeline, will result in a detrimental visual impact and is inconsistent Council's Scenic Landscape Protection Policy.</p> <p>Council's Strategic Planning and Urban Design Unit have reviewed the proposal and do not support the application.</p>
<p>Infrastructure and Services</p> <p>The submissions raise concerns that Pottsville's existing infrastructure and essential services are inadequate to accommodate the scale and intensity of the proposed development. Issues raised relate to water and sewage infrastructure, limited road capacity and parking, overcrowded schools, lack of health services and waste management.</p>	<p>The development cannot be serviced by way of supply of water. The proposed effluent disposal is not acceptable.</p> <p>In relation to supply of water, Council's Water and Wastewater Unit have reviewed the proposal and do not support the application.</p> <p>In relation to the proposed disposal and management of sewerage, refer to Attachment E which contains advice from Council's external consultant.</p>
<p>Traffic</p> <p>The submissions raise concerns that the development will result in unacceptable traffic volumes and safety risks, with potential long-term consequences impacting quality of life, road conditions and the local environment.</p>	<p>Insufficient information has been provided in the submitted Traffic Impact Assessment to adequately assess traffic impacts.</p>
<p>Environmental Impact</p> <p>The submissions raise concerns about the environmental impacts of the proposed development, particularly its proximity to Cudgera Creek, surrounding wetlands and sensitive koala habitat. The issues raised relate to risk of habitat</p>	<p>Impacts on the environment and biodiversity is a significant issue.</p> <p>Council's Sustainability and Environment Unit have reviewed the proposal and do not support the application.</p>

fragmentation, increased wildlife fatalities from traffic and the presence of domestic pets and pollution from runoff and effluent disposal.	
Earthworks The submissions raise concerns that the proposed earthworks including significant cutting and filling, will alter the natural landscape, disrupt existing watercourse and heighten flood risks for surrounding areas like Seabreeze Estate. These changes threaten ecological integrity, visual amenity, and environmental values of the site and its surroundings, with added risks such as acid sulfate disturbance and the potential introduction of invasive species like fire ants through imported fill.	Insufficient information has been provided in relation to earthworks or to satisfy Clause 7.10 of the TLEP 2014.
Flooding The submissions raise concerns at the proposed development will adversely impact flooding within the locality by reduce natural land that absorbs water, leading to increased runoff and flood risks for nearby residential areas. The submissions note that the frequency and severity of flooding, particularly around Cudgera Creek and Tom Merchant Drive, is an existing problem and concerns are raised that the development may exacerbate these issues, affecting local roads, properties and agricultural land.	Insufficient information has been provided in relation to earthworks or to satisfy Clause 5.21 of the TLEP 2014.
Effluent Disposal The submissions raise concerns about the proposed effluent disposal system, highlighting risks of environmental contamination public health impacts, and system unsustainability. Concerns are raised in relation to the proposal to spray treated effluent across cane fields near homes and waterways with potential for runoff during rain and floods carrying pollutants into Cudgera Creek.	Discussed above under Infrastructure and Services.

5. KEY ISSUES

The following Key Issues are relevant to the assessment of this application:

1. Owner's Consent
2. Permissibility in RU1 Zone
3. Zone Objectives
4. Biodiversity And Ecology

5. Supply of Water and Sewer
6. Visual Impact
7. Land Use Conflict
8. Bushfire
9. Contamination
10. Earthworks
11. Flooding
12. Extensive Outstanding Information

5.1 Owner's Consent

A significant procedural constraint is relevant to the determination of this application. The proposed access arrangements require Owner's Consent from Council for works within the Council owned road reserve, specifically Cudgera Creek Road.

In addition, Johansons Road and a portion of the Cudgera Creek bed are Crown owned land. The application was accompanied by correspondence from Crown Lands dated 5 July 2024, which provided conditional Owner's Consent, subject to the transfer of Johansons Road to Tweed Shire Council and Council's acquisition of part of the creek bed.

The request for Owner's Consent was formally considered by Council at its meeting on 24 October 2024. Council resolved to refuse the request for DA24/0352 and the formal resolution is provided at **Attachment C**.

As a result of this resolution, Council also does not support the land transfers necessary for the conditional consent provided by Crown Lands to take effect.

In light of Council's refusal to grant Owner's Consent, the Panel, as the Consent Authority, is not able to approve the application, as key components of the proposed works are situated on land under Council ownership.

5.2 Permissibility in RU1 Zone

The western portion of the site is zoned RU1 Primary Production, where caravan parks are a prohibited land use.

The proposed development includes an on-site Wastewater Treatment System, comprising a Wastewater Treatment Plant, Effluent Storage Lagoons (for wet weather storage), and Effluent Dispersal Areas. While the Treatment Plant and Storage Lagoons are situated within land zoned RU2 Rural Landscape, the proposed Effluent Dispersal Areas are located within the RU1 zone.

The Effluent Dispersal Areas are considered an integral and essential component of the proposed wastewater system, being directly linked to the treatment and disposal of sewage generated by the caravan park. As such, the dispersal areas are ancillary to the caravan park use and constitute development for the purposes of a caravan park, which is prohibited within the RU1 zone.

5.3 TLEP 2014 Zone Objectives

The proposal is not considered to be consistent with the objectives of the RU1 Primary Production and RU2 Rural Landscape zones for the following reasons:

- Caravan parks are a prohibited land use in the RU1 Primary Production zone under the and therefore the portion of the development located on RU1 zoned land is fundamentally inconsistent with the applicable zoning provisions.
- The introduction of permanent infrastructure and significant land modification may lead to the irreversible loss of land available for current or future rural production.

- The increased traffic, built infrastructure, and intensified land use are likely to conflict with surrounding agricultural operations and diminish the rural character and environmental values of the site and surrounds.
- The proposal does not demonstrate a meaningful relationship with agriculture, rural land use, or environmental tourism.
- The scale of population increase, along with associated noise, lighting, and traffic, poses a risk of disruption to neighbouring rural activities and may give rise to land use conflicts.
- The proposal could permanently alienate rural land from productive use, with no functional or economic link to agriculture or rural enterprise.
- The layout and scale of internal roads, built structures, and utility services reflect an urban development pattern that is incompatible with the rural setting.
- The proposed earthworks, vegetation removal, and landform alterations would significantly alter the natural landscape and further erode the site's rural character.

5.4 Biodiversity and Ecology

The BC Act

The BDAR is critically deficient and fails to meet the statutory requirements under the BC Act, Biodiversity Assessment Method 2020 and associated regulations. The BDAR is not properly made, lacking a finalised Biodiversity Credit Report, requisite Section 6.15 certification, and supporting documentation such as field datasheets, shapefiles, and detailed mapping. Additionally, the BDAR does not adequately identify and assess vegetation types, threatened ecological communities, or habitat for threatened flora and fauna species, including Serious and Irreversible Impact species. Key survey areas such as the Cudgera Creek riparian corridor are insufficiently examined, critical species are overlooked, and species polygons and impact assessments are incomplete or absent. The BDAR fails to demonstrate avoidance and minimisation of impacts in line with legislative expectations, and omits meaningful analysis of hydrological, connectivity, and ecological impacts.

Chapter 2 Coastal Management – SEPP (Resilience & Hazards) 2021

- Section 2.8: Development on land in proximity to coastal wetlands or littoral rainforest

The application has not provided sufficient information to adequately assess the potential impacts of the development on adjacent coastal wetlands. Specifically, a detailed hydrologic impact assessment is required to evaluate the potential effects on the health, integrity, and functioning of the receiving wetland system. At present, there is insufficient information to determine how the development may alter water quality, water quantity, wetland inundation patterns and catchment flows.

- Section 2.10: Development on land within the coastal environment area

The proposed development is likely to have direct impacts on native vegetation, fauna, and associated habitats within the mapped Coastal Environment Area, including potential impacts on threatened species and threatened ecological communities. The application does not demonstrate that all ecological values have been properly identified or assessed. Additionally, insufficient information has been submitted to confirm that the development will not significantly affect the biophysical, hydrological, or ecological integrity of the adjacent coastal wetland, nor the quality and quantity of surface or groundwater flows to and from the wetland. Furthermore, the application does not demonstrate that impacts have been avoided where possible, nor does it provide adequate justification that the development has been designed, sited, or will be managed to minimise or mitigate unavoidable impacts.

Chapter 3: Koala Habitat Protection 2020 - SEPP (Biodiversity & Conservation) 2021

Assessment Report – DA24/0352 - demolition of existing structures erection of a caravan park containing 267 long term sites and 12 short term sites, clubhouse, outbuildings and associated road

The application fails to demonstrate consistency with the vision, aims, and intended outcomes of the Koala Plan of Management, and is therefore inconsistent with Section 3.8 of the Koala Habitat Protection 2020 provisions under the SEPP (Biodiversity & Conservation) 2021. A Koala Habitat Assessment or Koala Activity Assessment, as required under the Koala Plan of Management, has not been submitted. The applicant has not verified the presence or absence of koala activity on the site in accordance with the prescribed methodology. Furthermore, the BDAR fails to reference or address the requirements of the Koala Plan of Management, representing a significant gap in the ecological assessment of the proposal.

DCP A19 - Biodiversity and Habitat Management

The proposal fails to comply with the aims, objectives, and principles of DCP A19 and is likely to result in unacceptable adverse environmental impacts. Under Section 7.13(6) of the BC Act, Council is empowered to establish its own standards to avoid or minimise biodiversity impacts, which are implemented through the development envelope controls (DECs) in DCP A19. The proposal does not meet these controls, failing to demonstrate that the development has been appropriately designed to avoid and minimise impacts on ecological values. Key issues identified include the direct removal of threatened entities, lack of adequate ecological buffers (notably the unacceptable 30m buffer to Cudgera Creek, a fifth order stream, where 40m is required), filling of first-order waterways, and disruption to existing drainage regimes. The application also fails to meet requirements for long-term protection and management of red-flagged areas and omits statutory protection mechanisms as required under DECs C9 and C10. Further deficiencies include the absence of an Arboricultural Impact Assessment for trees proposed to be retained, inadequate integration of recommended agricultural buffers, failure to consider ecological impacts associated with the emergency egress road to Tom Merchant Drive, and no reference to the restrictions within the Koala Beach Wildlife Protection Area.

5.5 Supply of Water and Sewer

The application has failed to demonstrate compliance with Clause 7.10 of the TLEP 2014

The application includes a Reticulated Water Servicing Assessment, which outlines three options for water supply, but none of these are viable due to the site being outside of Council's Development Servicing Plan (DSP) area for water supply. Furthermore, the Koala Beach reservoirs are already at capacity, and additional development would compromise the water supply system for existing and future zoned areas.

Regarding sewage, the proposed Wastewater Treatment System includes Effluent Dispersal Areas located in the RU1 zone, where caravan parks are prohibited. The assessment has deemed the Effluent Management Plan as being deficient, with concerns about the site's suitability for sustainable wastewater management and significant risks to the environment and surrounding community.

Additionally, the proposal does not comply with Part 3 of the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2021, which mandates that caravan parks must be connected to a reticulated water and sewer system or provide alternative systems.

5.6 Visual Impact

The proposal is considered to have a significant adverse visual impact, particularly given the subject site's strong visibility and its prominent relationship with the surrounding area. Council's Scenic Landscape Protection Policy identifies key public viewing locations, from which new developments' visual impacts should be assessed. The proposed development is expected to

negatively affect the scenic quality of the surrounding streetscape, especially for those traveling along local scenic drives. Relying solely on landscape screening as the primary means of mitigating the visual impact is not deemed satisfactory.

5.7 Land Use Conflict

The site is classified as Regionally Significant Farmland the application includes a LUCRA prepared by Gilbert and Sutherland and dated 11 April 2024. The LUCRA is limited in scope and does not provide a comprehensive analysis, as it failed to conduct interviews with surrounding landowners to understand the current activities in the area and the potential impacts of the proposed development on these activities. Additionally, the LUCRA does not adequately demonstrate how agricultural hazards have been assessed or provide the necessary information to support its risk assessment. It also overlooks the potential increase in traffic on existing roads and fails to address the possible odour impacts on surrounding land uses from the proposed effluent disposal.

5.8 Bushfire

The application includes a Bushfire Threat Assessment prepared by AEP and dated May 2024. The proposal was referred to RFS under Section 100B of the Rural Fires Act 1997. RFS have advised that the application cannot be supported in its current form, as additional information is required to proceed with further assessment. No General Terms of Approval have been issued.

Additionally, the Bushfire Threat Assessment identified that secondary emergency egress via Tom Merchant Drive is required. This access is proposed via Tom Merchant Drive which is mapped as Community Land and not part of the Council road reserve.

5.9 Contamination

A Preliminary and Detailed Site Investigation prepared by Qualtest Laboratory and dated 12 April 2024 was submitted as part of the application. The investigation identifies potentially contaminating activities on the site, including above-ground fuel storage tanks, farm machinery sheds, stockpiled waste, filled areas, waste pits, sugar cane farming, and chemical storage. Sampling results reveal elevated investigation levels for zinc and asbestos. The investigation concludes that the site can be made suitable for the proposed caravan park development, subject to the preparation and implementation of a Remediation Action Plan to address the identified contamination.

Pursuant to Section 4.6(1)(c) of the SEPP (Resilience & Hazards) 2021, consent must not be granted unless the consent authority is satisfied that if remediation is required to make the land suitable for the proposed use, it will be remediated before the land is used for that purpose. The application does not include a Remediation Action Plan, and as such, the consent authority cannot determine whether the land will be adequately remediated.

5.10 Earthworks

Pursuant to Clause 7.2(3), in deciding whether to grant development consent, the consent authority must consider the following matters—

- (a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,*
- (b) the effect of the development on the likely future use or redevelopment of the land,*
- (c) the quality of the fill or the soil to be excavated, or both,*
- (d) the effect of the development on the existing and likely amenity of adjoining properties,*
- (e) the source of any fill material and the destination of any excavated material,*
- (f) the likelihood of disturbing relics,*

- (g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,*
- (h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development,*
- (i) the proximity to, and potential for adverse impacts on, any heritage item, archaeological site, or heritage conservation area.*

The Concept Engineering Plans prepared by AWJ Johnston and dated 24 May 2024 indicates that fill will need to be imported to facilitate the proposed earthworks required to establish a relatively flat development footprint and internal road network. The amount of fill material has not been quantified and the haulage route or source of fill material is unknown. Therefore, consideration cannot be given to the quality of the required fill.

The development proposes significant earthworks either within or in very close proximity to the Coastal Wetlands Proximity Area of the Coastal Wetlands. The application has not demonstrated that the development will not have an adverse environmental impact.

5.11 Flooding

The submitted Flood Impact Assessment is inadequate and requires further information to properly assess flood impacts. The Flood Impact Assessment uses outdated 2013 LiDAR data. The Flood Impact Assessment also fails to account for the proposed driveway connection to Tom Merchant Drive, which involves embankment fill that could obstruct flood flow and affect flood behaviour. Additionally, the Flood Impact Assessment does not detail how the access road's bridges and culverts have been incorporated into the flood model, nor confirm their sizing for proper flood conveyance. The assessment is based on an incomplete cumulative development scenario and does not include the access road. Insufficient information has been provided with regard to the design of the bridge, specifically regarding the adequacy of its 400mm gap for floodwater conveyance and its foundation type.

5.12 Extensive Outstanding Information

A significant amount of information is required to satisfy internal and external agencies, including but not limited to the following:

- Environmental Health Unit:
 - Investigation into whether dewatering is required. If so, a Dewatering Management Plan prepared in accordance with 'Dewatering in the Tweed – A Guideline for the Management of Dewatering Operations' will be needed.
 - Additional matters related to land use conflict, as previously addressed.
 - A Remedial Action Plan for site contamination is required, outlining objectives and processes for remediation.
 - The application refers to an Acid Sulfate Soil Management Plan, but no such plan has been submitted for consideration.
- Flooding Engineer:
 - An amended Flood Impact Assessment addressing LiDAR data, flood modelling for Tom Merchant Drive, flood for proposed access road, bridges, and culverts and cumulative development scenario.
 - Further information on how the proposed bridge will function in relation to flooding and drainage.
- Traffic Engineer:
 - Outstanding information includes clarification of predicted bedroom numbers for long-term sites, justification for the proposed turn treatments at the Cudgera Creek

Road and Johansons Road intersection, details on the provision of parking spaces for multiple vehicles per residence, provisions for bicycle parking, management of the lockable gate for secondary emergency access, redesign of the intersection to accommodate a 19m AV, and a design report explaining the use of multiple short-span bridges for the construction of Johansons Road.

- RFS:
 - Additional information in accordance with correspondence contained in **Attachment F**.
- NSW Department of Planning and Environment – Water:
 - Additional information in accordance with correspondence contained in **Attachment G**.

6. CONCLUSION

This development application has been considered in accordance with the requirements of the EP&A Act and the Regulations as outlined in this report. Following a thorough assessment of the relevant planning controls, issues raised in submissions and the key issues identified in this report, it is considered that the application cannot be supported.

It is considered that the key issues as outlined in Section 5 have not been resolved.

7. RECOMMENDATION

That the Development Application DA24/0352 for demolition of existing structures erection of a caravan park containing 267 long term sites and 12 short term sites, clubhouse, outbuildings and associated road (NRPP) at Lot 250 DP 755701; No. 1183 Cudgera Creek Road CUDGERA CREEK be refused pursuant to Section 4.16(1)(b) of the Environmental Planning and Assessment Act 1979 reasons for refusal attached to this report at **Attachment A**.

The following attachments are provided:

- **Attachment A:** Reasons for refusal
- **Attachment B:** Crown Lands correspondence dated 5 July 2024
- **Attachment C:** Council Resolution dated 24 October 2024
- **Attachment D:** Legal Advice prepared by Sparke Helmore Lawyers dated 5 December 2024
- **Attachment E:** Review of Effluent Management Plan prepared by Martens & Associates dated 11 March 2025
- **Attachment F:** Correspondence from NSW RFS dated 19 September 2024
- **Attachment G:** Correspondence from NSW Department of Planning and Environment (Water) dated 30 September 2024