

COUNCIL ASSESSMENT REPORT NORTHERN REGIONAL PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSNTH- 404 DA25/0011
PROPOSAL	Staged 217 lot residential subdivision, with conservation lot and associated civil works and vegetation removal, environmental facility, recreation areas and environmental protection works (NRPP)
ADDRESS	Lot 13 DP 1264394; Henry Lawson Drive TERRANORA; Lot 3 DP 622318; No. 127-137 Mahers Lane TERRANORA
APPLICANT	Zone Planning NSW Pty Ltd
OWNER	Mahers Lane Developments Pty Ltd
DA LODGEMENT DATE	8 January 2025
APPLICATION TYPE	Development Application
REGIONALLY SIGNIFICANT CRITERIA	<p>Section 2.19(1) and Clause 2 of Schedule 6 of <i>State Environmental Planning Policy (Planning Systems) 2021</i> declares the proposal regionally significant development as:</p> <p>3 General development over \$30 million</p> <p><i>Development that has an estimated development cost of more than \$30 million.</i></p>
CIV	\$36,387,252.50 (excluding GST)
CLAUSE 4.6 REQUESTS	NIL
TOTAL & UNIQUE SUBMISSIONS KEY ISSUES IN SUBMISSIONS	39 submissions + 1 late submission
DOCUMENTS SUBMITTED FOR CONSIDERATION	<ul style="list-style-type: none"> - Statement of Environmental Effects - Visual Impact Assessment - Arboriculture Impact Assessment Report - Waste Management Plan - Terranora North Biting Inspection Impact Assessment - Socio Economic Impact Assessment - Traffic Report - Acid Sulfate Soil Report - LUCRA - Letter of Offer – VPA

	<ul style="list-style-type: none"> - Cultural Heritage Report - Landscape Masterplan - Site Rehabilitation Plan - Plan of Management for 7a zone land - Stormwater Management Plan (Quality) - Water and Sewer Servicing Report - Engineering Services Report - Engineering Drawings - Construction Noise Assessment - Bushfire Report - Wetland Hydrology Assessment - Baseline Water Quality Report - BDAR - Geotechnical Investigation - Community Outcomes Report - Easement Plan - Preliminary Site Investigation - DAP Meeting Minutes - Surface and Ground Water Monitoring Plan - Plan of Development (POD) - TDCPB24 Compliance Table - TDCPA5 Compliance Table - Tweed Regional Action Plan 2036 Compliance Table - Tweed Local Strategic Planning Statement 2020 Compliance Table - North Coast Regional Plan 2041 Compliance Table - Estimated Development Costs - Owners Consent
RECOMMENDATION	Refusal
DRAFT CONDITIONS TO APPLICANT	N/A
SCHEDULED MEETING DATE	20 August 2025
PLAN VERSION	As originally submitted
PREPARED BY	Hannah Van de Werff
DATE OF REPORT	7 August 2025

EXECUTIVE SUMMARY

The subject sites are known as Lot 3 DP622318 and Lot 13 DP1264394 (“the site”) and is comprised of two (2) separate allotments of land with a total land area of 61.87Ha. The site has an undulating and stepped topography with RL’s ranging from RL 0m AHD – RL 94m AHD.

The site is partially located in an urban release area. The eastern precinct (Lot 3 DP622318) forms part of the Terranora Area E Urban Release Area (affected by the site specific Section B24 Area E Urban Release Development Code of Tweed Development Control Plan 2008 (“DCP”) and the western precinct (Lot 13 DP1264394) is located in the Terranora Village catchment (affected by the site specific Section B1 Terranora of the DCP 2008).

A large portion of the western precinct is zoned RU2 Rural Landscape pursuant to the Tweed Local Environmental Plan 2014 (“TLEP2014”) which aids as a buffer between the existing rural village (to the south) and adjacent wetland. The wetland is zoned 1a Rural pursuant to the Tweed Local Environmental Plan 2000 (“TLEP2000”) and is subject to a “Conservation Zone Review” under TLEP2014. The eastern precinct is zoned R1 General Residential pursuant to TLEP2014 and 7(a) Environmental Protection (Wetlands and Littoral Rainforest) pursuant to TLEP2000 (see **Figure 6** later in this report).

The site is accessible from the existing road network via Mahers Lane and Henry Lawson Drive. Henry Lawson Drive is defined as a sub-arterial road with an approximately 8.5m wide carriageway. Mahers Lane is a collector road with an approximately 7.5m wide carriageway. Both roads are currently no through roads under the control of Tweed Shire Council. The adjacent major intersections of the proposed development are the Terranora Road/Henry Lawson Drive Intersection and the Terranora Road/Mahers Lane Intersection. Both intersections are priority controlled intersections. In terms of future development, the construction of the Broadwater Parkway is planned to connect Fraser Drive and Mahers Lane, serving as a central transportation corridor within Terranora Area E (refer to future “proposed road” to the north of the subject site highlighted in blue in **Figure 1** below).

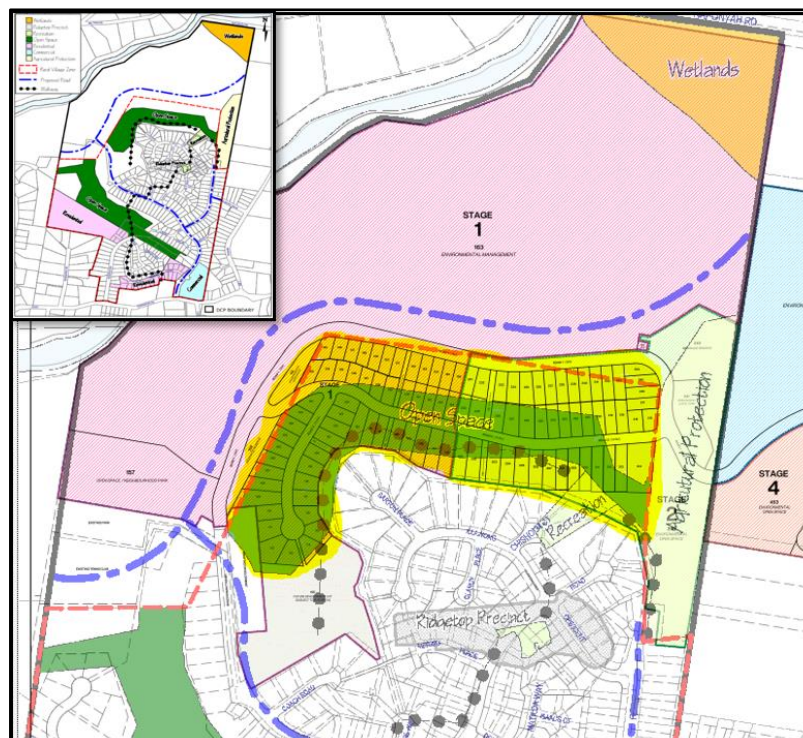


Figure 1: Site Specific Section B1 TDCP2008 - Terranora Locality Plan and proposed plan of subdivision overlaid (yellow highlight extent of urban footprint not catered for in Locality Plan).

Stormwater runoff within the site currently flows via overland and channel flow to the low-lying areas north of the site before discharging into the Terranora Broadwater (coastal wetland). An existing access track, which runs along Council easements adjacent to the wetland environment, acts as a retention bund, with a number of pipe culvert/outlets installed along the track discharging stormwater from minor events. The upstream residential catchment (Terranora Village) of approximately 18.8ha discharges through the development site via a number of concentrated discharge locations (including pipe discharge) and overland flow. It is noted that the access track is not a registered right of carriageway or “fire trail” access. Rather the track is required by Council for maintenance access of its infrastructure.

There is a history of a landslip (circa 2022) on the subject site (which extended onto a Council track and private land beyond the subject site) and therefore there are significant geotechnical constraints on the land. The owner of the subject site has lodged a Part 5 Review of Environmental Factors (“PTV REF”), which is being considered by Council for “Environmental Protection Works” to potentially remediate the landslip land. The proposed remediation works include earthworks, new drainage works (including new stormwater drainage channels which would likely concentrate freshwater directly into the wetland) and tree removal works. This PTV REF is being assessed on its merits separately and independently of this DA however as explained later in this report the two applications have similar elements, and the proposed DA has been designed to be based on the proposed PTV REF works.

The site benefits from an existing consent for subdivision and creation of open space allotment in line with the Terranora Locality Plan. The stamped approved plans associated with this consent are provided later in this report (see Site History) and also replicated below in **Figure 2**.

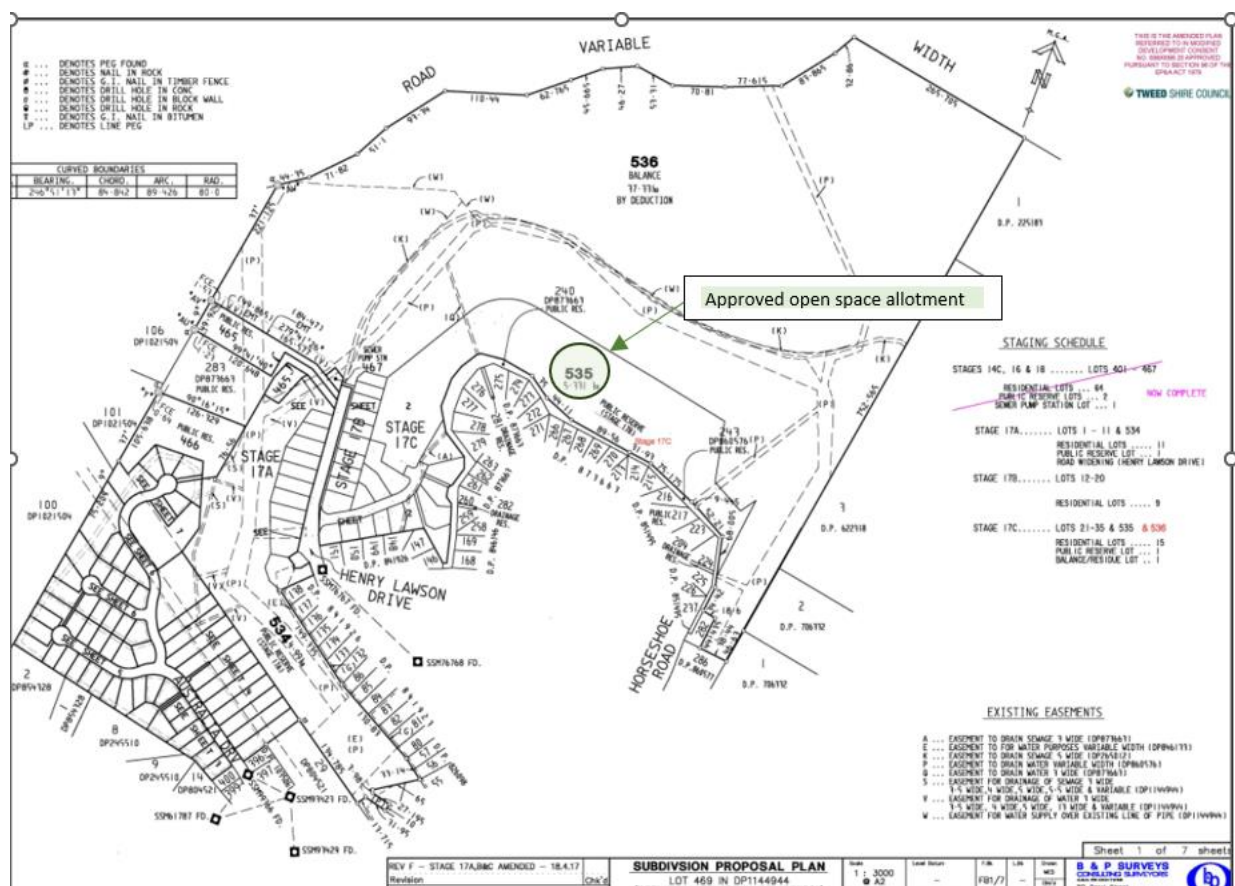


Figure 2: Stamped approved plan of subdivision over the western portion of the site (S96/0066)

The site is bushfire prone land, has biodiversity values and is affected by Tweed Shire Council's Koala Plan of Management ("**KPoM**"). The land has some agricultural land value and is mapped as an area affected by Predictive Aboriginal Place of Heritage Significant. The lower portion of the site (to the north, adjacent to the wetland) is mapped to be affected by flooding.

The subject application was lodged on 8 January 2025 as Nominated Integrated Development (pursuant to the Water Management Act 2000 and Rural Fires Act 1997).

The application was exhibited for a period of 28 days from 22 January 2025 until 19 February 2025. During the exhibition period, 39 submissions were received, and 1 late submission was received after the notification period ended. The majority of concerns raised relate to traffic impacts, earthworks/geotechnical stability of the land and slope, impact of the proposal to the coastal wetland, location of open space, ecological impacts and bushfire protection. A summary of assessment comments that relate to the concerns raised are provided later in this report.

The application is referred to Northern Regional Planning Panel ("**the Panel**") as the development is declared Regionally Significant Development pursuant to Section 2.19(1) and Clause 2 of Schedule 6 of State Environmental Planning Policy ("**SEPP**") (Planning Systems) 2021. The Panel was briefed on the proposal on 21 May 2025. At the briefing, the majority of the key issues raised in this report were discussed. However, at the time of briefing the proposal, some internal and external agency referral comments remained outstanding.

The last of the outstanding referrals were received on 12 June 2025. Notably, Water NSW made a request for additional information and Councils Traffic Unit confirmed the proposal could not be supported due to the impact of additional traffic generation on the existing road network in the locality (particularly intersections at Mahers Lane/Terranora Road).

On 23 June 2025, Council received notification of a Class 1 Appeal being filed with the NSW Land and Environment Court ("**LEC**").

On 21 July 2025, a directions hearing was held and a Section 34 Conciliation conference set down for December 2025. Councils Statement of Facts and Contentions ("**SOFAC**") is being prepared concurrent to the completion of this assessment report.

It is important to note that as part of the planned delivery of Area E, the first DA for lots within Area E (Altitude Aspire DA09/0701) had a Voluntary Planning Agreement ("**VPA**") which was entered into between Tweed Shire Council and Metricon QLD Pty Ltd (2014). The VPA provided a mechanism by which monetary contributions and dedication of land were to be made by the developer towards the provision of public amenities, services and infrastructure, including:

- the construction of Broadwater Parkway and Mahers Lane;
- flood mitigation works;
- protection and restoration of environmental land;
- the provision of structured public open space;
- the dedication of land for the future route of the Broadwater Parkway; and
- the dedication of land for a public reserve buffering environmental land.

As discussed later in this report, the servicing of the current proposed development relies on the delivery of sewer, water and road infrastructure as per the VPA and all other developments in the Area E Precinct are required to enter into similar VPA's. At the time of reporting this DA to the Panel, no applications have been determined by Council for construction of the core infrastructure required as per the VPA in terms of road, water and sewer. As such, it is considered that the proposed

development is premature in terms of sequencing of development in the Area E/Terranora precinct and therefore does not promote the orderly and economic use and development of land in accordance with the objects of the Environmental Planning & Assessment Act 1979 (**“the Act”**).

In addition, having regard to the land constraints, there are considerations that affect the proposal which fail to satisfy the relevant Environmental Planning Instruments (**“EPI’s”**). They include:

The key issues associated with the proposal included:

1. *Ecological Impacts*- The proposed setbacks fail to comply with high order EPI’s as well as Section A19 of Tweed DCP 2008 in terms of buffer distances from the mapped coastal wetland. Furthermore, the likely impact of freshwater discharge on Ecologically Endangered Community (**“EEC”**) which is dependent on high saline environment (saltwater), is such that it would require further Environmental Impact Studies which are not catered for in this DA. There is also a lack of information to properly assess this aspect of the proposal in terms of stormwater drainage information, proper groundwater impact assessment and ecological impact assessment, this is discussed in further detail throughout the report.
2. *Lack of public utility infrastructure and road network capacity* - The existing reticulated sewer infrastructure and water supply has no planned capacity to cater for the proposed development. Furthermore, the existing road network is insufficient to cater from the additional trips likely to be generated by the proposed development. Where there may be capacity in the future (via infrastructure developed on adjoining land by others), the proposed development appears to be premature in terms of its delivery and timing given that no consent has been issued for such infrastructure to be delivered and therefore adequate arrangements for the said infrastructure have not been made to make that infrastructure available when it is required as statutorily required by Clause 7.10 of the Tweed LEP 2014.
3. *Bushfire* – The proposed layout of the development fails to adequately respond to the bushfire risk of the site and appropriate Asset Protection Zones (**“APZ’s”**) cannot be catered for on the subject site (outside of dedicated land). To this end and as discussed in further detail later in this report, the APZ’s extent past the perimeter road and into land proposed to be dedicated to Council (which is contrary to Councils *Asset Protection Zones on Public Land Version 1.4* policy). Furthermore, the APZ fail to acknowledge required rehabilitation areas, and the staging of the development fails to adopt the recommendations of the Bushfire Risk Assessment Report. Other land constraints (lack of water supply) would jeopardise assumptions in the Bushfire Risk Assessment Report and there are sections of the development that have not been catered for in the submitted report (i.e. bushfire risk to the western aspects of proposed Lots 101-109, proposed Lot 133 and proposed Lot 145).
4. *Overdevelopment of the site* – Having regard to the ecological impacts (buffer distances), lack of infrastructure, bushfire risk and the extent to which the proposed urban footprint exceeds the planned urban footprint under the site specific DCP that applies to the site (Section B1 Tweed DCP 2008) (see **Figure 2** above), the proposal is considered to reflect an overdevelopment of the site causing adverse impact to the existing and future natural and built environment, thus not being in the public interest.
5. *Lack of information* - There is insufficient information to properly satisfy matters for consideration having regard to ecology, bushfire, contamination, Acid Sulfate Soil, stormwater management, provision of open space, visual impact, geotechnical impacts, groundwater investigation, construction noise assessment and management (amenity) and landowners’ consent for earthworks on adjoining land. In addition, external agencies have also requested additional information to satisfy Fisheries Management Act 1994, Water Management Act 2000 and Aboriginal Cultural Heritage.

As such, following consideration of the matters for consideration under Section 4.15(1) of the EP&A Act and relevant EPI’s (as surmised above), the proposal cannot be supported. As such, the application is recommended for refusal for the reasons contained in Attachment A of this report.

1. THE SITE AND LOCALITY

The site comprises of a predominantly vacant 61.87Ha allotment of land that has an undulating and steep topography with RL's ranging from RL 0m AHD – RL 94m AHD.

The land is partially located in an urban release area. The eastern precinct (Lot 3 DP622318) forms part of the Terranora Area E urban release area (affected by its own site specific DCP B24). The western precinct (Lot 13 DP1264394) is located in the Terranora Village catchment (affected by a separate site specific DCP B1 Terranora). A large portion of the western precinct is zoned RU2 Rural Landscape under the TLEP2014 which aids as a buffer between the rural village and adjacent wetland (zoned 1a Rural under the TLEP2000).

The site is accessible from the existing road network via Mahers Lane and Henry Lawson Drive. Henry Lawson Drive is defined as a sub-arterial road with an approximately 8.5m wide carriageway. Mahers Lane is a collector road with an approximately 7.5m wide carriageway. Both roads are currently no through roads under the control of Tweed Shire Council. The adjacent major intersections of the proposed development are the Terranora Road/Henry Lawson Drive Intersection and the Terranora Road/Mahers Lane Intersection. Both intersections are priority controlled intersections. In terms of future development, the construction of the Broadwater Parkway is planned to connect Fraser Drive and Mahers Lane, serving as a central transportation corridor within Terranora Area E.

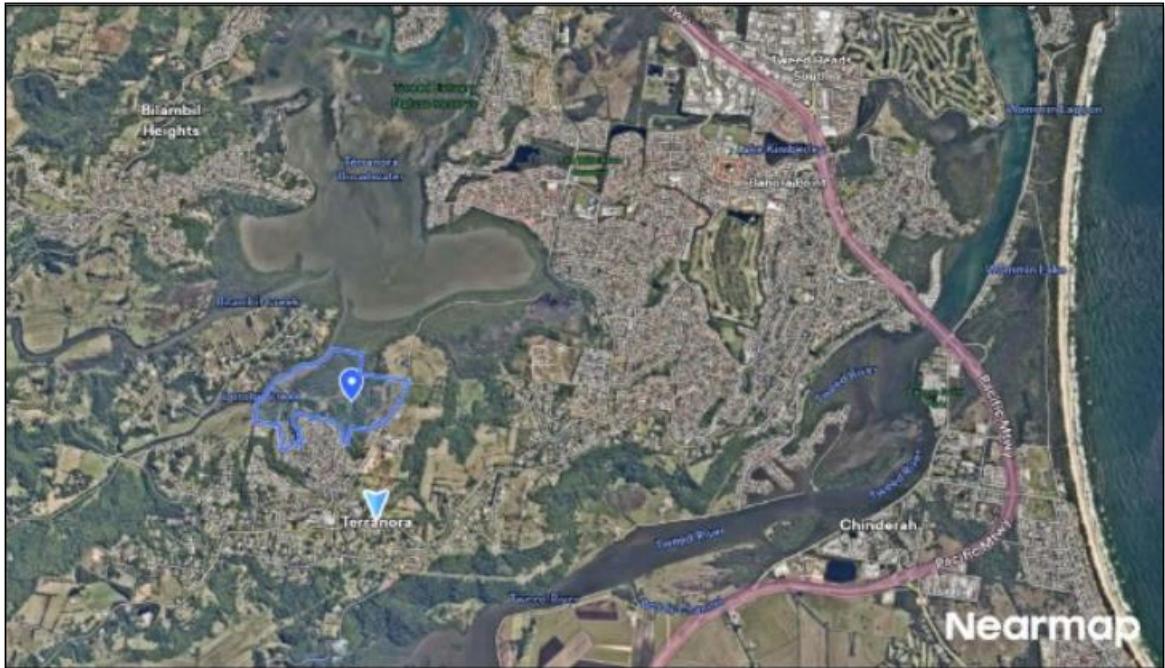
Stormwater runoff within the site currently flows via overland and channel flow to the low-lying areas north of the site before discharging into the Terranora Broadwater (coastal wetland). An existing access track on the site acts as a retention bund, with a number of pipe culvert/outlets installed along the track discharging stormwater from minor events. The upstream residential catchment (Terranora Village) of approximately 18.8ha discharges through the site via a number of concentrated discharge locations (including pipe discharge) and overland flow.

The Site contains an existing water main. The 600mm Duroby water main runs adjacent to the existing access track within Lot 13 DP1264394 which then extends through Lot 3 DP622318 intersecting the northwest corner of the lot. Feeding into the Duroby main is an existing 150mm diameter water main from Henry Lawson Drive that services Terranora Village. There is also an existing 100mm diameter water main that runs within Mahers Lane along the frontage of Lot 3 DP622318.

An existing 250mm diameter sewer rising main also runs adjacent to the existing access track in Lot 13 DP 1264394 and extends from an existing Sewer Pump Station (SPS3042) located at the northern termination of Henry Lawson Drive through Lot 13 and thereafter through the northwestern corner of Lot 3 DP 622318. There is no sewage main along the frontage of the Site in Mahers Lane.

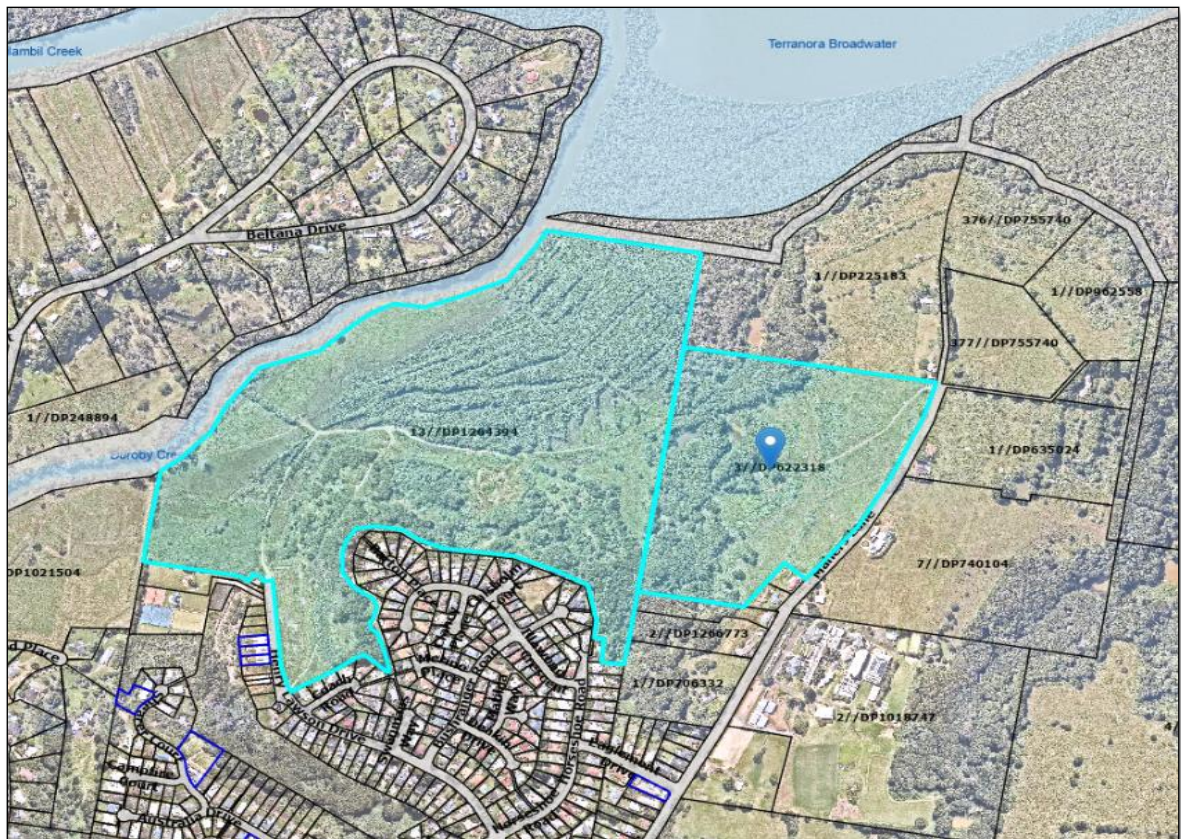
There is a history of landslip on the site (which extends beyond the site and onto Council land and other private land) and therefore there are significant geotechnical constraints on the land.

Locality Plan



(source: applicants SEE)

Aerial Imagery



The site has many environmental constraints. It contains a mapped Coastal Wetland environment pursuant to Chapter 2 SEPP (Resilience and Hazard) 2021. This wetland (and its buffer areas) consumes a large portion of the western precinct and traverses the boundaries of the two lots into the eastern precinct to the north. The wetland contains EEC (Saltmarsh) and suspected native fish habitat.

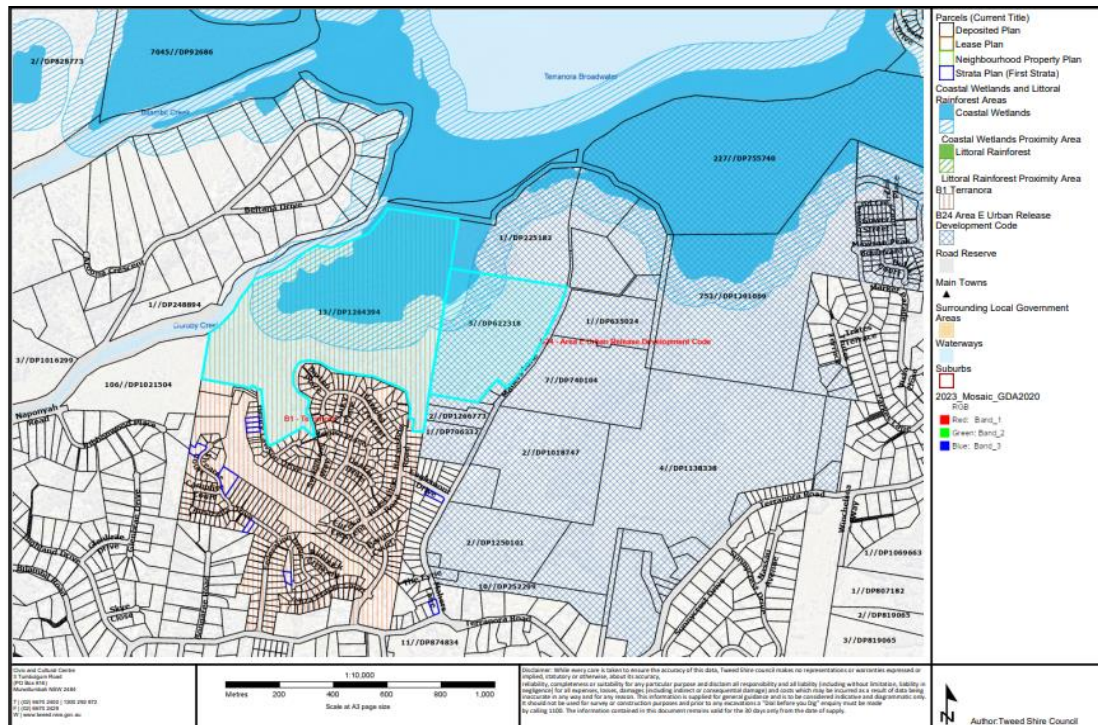


Figure 3: TSC GIS Map with Coastal Wetland and Site Specific DCP overlay (Section B1 to western portion of site and Section B24 to eastern portion of site).

The entire development site contains a relatively steep topography with a portion of land in the central part of the western precinct subject to a recent landslip (proposed to be restabilised via a PTV application which is currently under separate merit assessment by Council). Acid Sulfate Soils (Class 2 and Class 5) are located on the entire development site (the proposal includes treatment of and reuse on site) noting that Class 2 Acid Sulfate Soils are prevalent in the western precinct. The site is affected by moderate to high groundwater vulnerability and is also affected by Q100 flooding.

The site is bushfire prone land, has biodiversity values and is affected by Tweed Shire Council's KPOM. The land has some agricultural land value and is mapped to as an area affected by Predictive Aboriginal Place of Heritage Significant.

1.1 The Locality

The site is located to the south of Duroby Creek and the Terranora Broadwater. The eastern boundary is bordered by Mahers Lane from a location adjacent to the Lindisfarne School to its current extent. The southern boundary is delineated by the existing residential development fronting Coach Road, Illawong Crescent, Barton Place, Chisholm Court, Bushranger Road and Horseshoe Road. The western boundary of the site adjoins a large agricultural lot and the existing Terranora tennis complex.

The site is located in Terranora which comprises of a mix of low density residential and large lot/rural village zones. The site is located 750m north of Terranora Pavillion Marketplace shopping village which includes small speciality shops, cafes and an IGA supermarket.

Lindisfarne Anglican Grammar School and Terranora Public School are located within the vicinity of the site and the land is bound by structured open space (tennis courts to the west).

Tweed City Centre is located 5.9km northeast of the site and Gold Coast Airport is located 6.8km northeast of the site.

2. THE PROPOSAL AND BACKGROUND

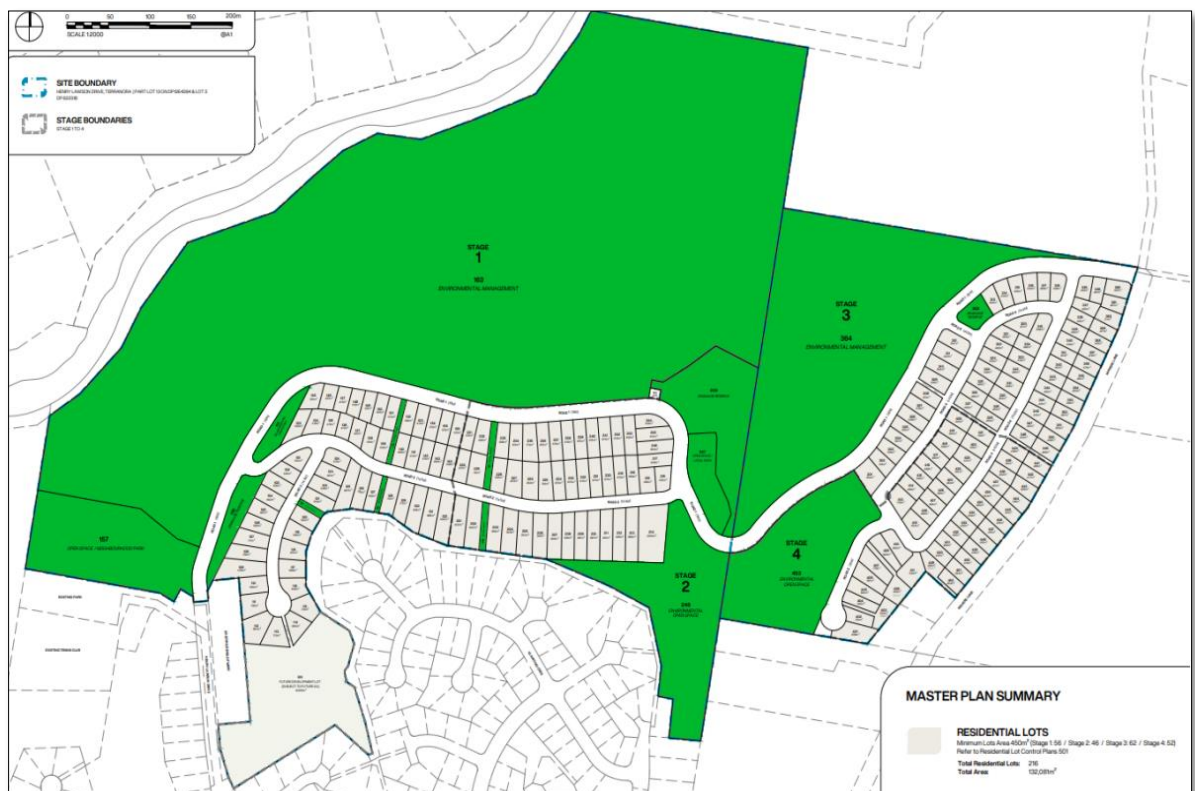
2.1 The Proposal

The proposal seeks consent for a staged Torrens title subdivision of land with a total lot yield of 216 residential lots plus a future development lot.

The proposal includes civil works (including bulk earthworks, the provision of services and the construction of roads, a sewer pump station and a stormwater management system) as well as the delivery of various forms of open space for public purposes.

The application proposes the dedication of land for public purposes (including public reserves and drainage reserve lots) and offsite works for the purposes of road and pedestrian improvements, stormwater management, augmentation of water reticulation and sewerage within Mahers Land and the Council reserve bordering Lot 13 DP 126494 to the south.

Master Plan summary



The development is proposed to be undertaken in four (4) consecutive stages, in accordance with the land areas identified in the plan of development package (see extract of plan in the **Figure 4 & Figure 5** below). The detail of the works to be carried out in each stage is as follows:

Stage 1

- Bulk earthworks across the entire development footprint
- Roadworks in the Stage 1 area
- Stormwater infrastructure for the Stage 1 area
- Stormwater bio-retention Basins A and B
- Sewer Pump Station and connections
- Water reticulation infrastructure across the Stage 1 area
- Civil and embellishment works in reserve areas

Stage 2

- Roadworks in the Stage 2 area
- Stormwater infrastructure for the Stage 2 area
- Sewer infrastructure and connections
- Water reticulation infrastructure across the Stage 2 area
- Civil and embellishment works in Stage 2 reserve areas

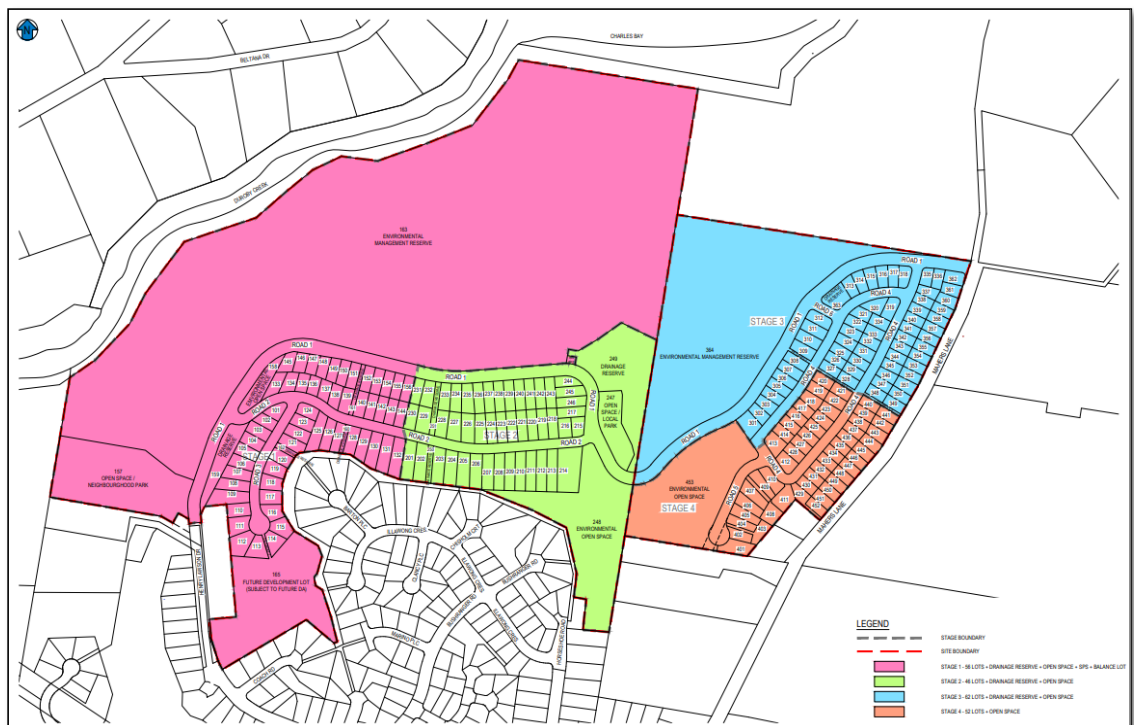
Stage 3

- Roadworks in the Stage 3 area
- Stormwater infrastructure for the Stage 3 area
- Stormwater bio-retention Basin C
- Water reticulation infrastructure across the Stage 3 area
- Road connection to Mahers Lane
- Civil and embellishment works and dedication of Stage 3 reserve areas

Stage 4

- Roadworks in the Stage 4 area
- Stormwater infrastructure for the Stage 4 area
- Water reticulation infrastructure across the Stage 4 area
- Civil and embellishment works and dedication of Stage 4 reserve areas

Figure 4: Proposed Staging (extract from Statement of Environmental Effects prepared by Zone Planning)



Lot yield by stage summary

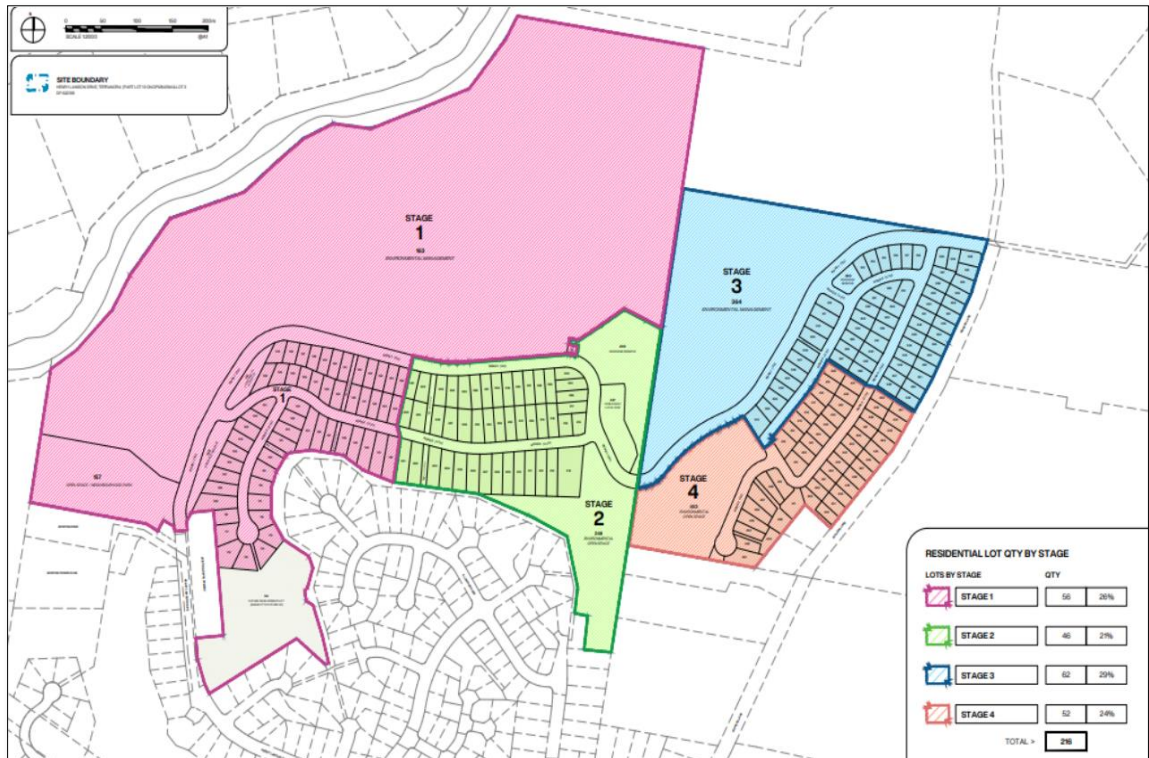


Figure 6: Lot yield by Stage summary

The key development data is provided in **Table 1**.

Table 1: Development Data

Control	Proposal
site area	61.78Ha
Lot yield	217

Proposed Uses and Lot sizes	101-156, 201-246 301-362, 401-452	450 – 2,202 (Various)	Future dwelling sites
	157	1.68ha	Casual Open Space/Neighbourhood Park
	158	1,689m ²	Environmental Open Space
	159	2,551m ²	Drainage reserve
	160	256m ²	Drainage reserve
	161	456m ²	Drainage reserve
	162	267m ²	Drainage reserve
	163	26.95ha	Environmental Management
	247	3,619m ²	Casual Open Space/Local Park
	248	1.97ha	Environmental Open Space
	249	1.11ha	Drainage reserve
	250	438m ²	Drainage reserve
	251	622m ²	Drainage reserve
	363	987m ²	Drainage reserve
	364	5.83ha	Environmental Management
	453	1.93ha	Environmental Open Space
	164	144m ²	Sewer Pump Station
	165	19,506m ²	Future development lot
Clause 4.6 Requests	Not submitted, however proposed Lot 163 is below min. lot size of 40Ha in RU2 zone and proposed Lot 160,162 and 438 are below the minimum lot size of 450sqm in RU5 zone. Potentially permitted under Clause 2.75 of SEPP (Exempt and Complying Development Code) 2008 providing no vegetation removal on the land (see discussion in TLEP2014 assessment table later in this report).		

The provision of Open Space in the proposed location (adjacent to existing tennis courts the western extent of the site) differs to the anticipated location in the site specific DCP that applies to the site and also the most recent subdivision consent that applies to the land. This has been reviewed by Councils Parks and Active Communities Unit who have advised there is merit to the proposed location of open space despite the variation to the DCP. However, despite this being the case, other units within Council have stated that insufficient information is available to determine whether appropriate action has been taken to consider the ecological merit of that relocated open space. There are also matters of public interest based on community expectations for the area to remain as per the DCP as Open Space. See Key Issues for further discussions regarding this issue.

2.2 Background

A pre-lodgement meeting was held prior to the lodgement of the applicant on 31 July 2024 where various issues were discussed. A summary of the key issues and how they have been addressed by the proposal is outlined in **Attachment B**.

The development application was lodged on **8 January 2025**. A chronology of the development application since lodgement is outlined below including the Panel's involvement (briefings, deferrals etc) with the application:

Table 2: Chronology of the DA

Date	Event
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31 July 2024	Pre-lodgement meeting convened with Tweed Shire Council
8 January 2025	DA lodged
10 January 2025	DA referred to internal departments
15 January 2025	DA referred to external agencies
22 January 2025	Exhibition of the application commenced
19 February 2025	Exhibition of the application closed
6 May 2025	NRPP Briefing report submitted
21 May 2025	NRPP briefing meeting
30 May 2025	Outstanding agency referral comments received
12 June 2025	Outstanding internal referral received
23 June 2025	Class 1 Deemed Refusal Appeal filed with NSW Land and Environment Court
21 July 2025	Directional Hearing NSW LEC – Section 34 Conciliation Conference scheduled for December 2025
1 August 2025	Recommendation report submitted
20 August 2025	Scheduled public determination meeting to be held

a) Site History

The site has been subject to S96/0066 which approved a 102 lot residential subdivision (approved by Council 19 August 1999 under deferred commencement) known as the Terranora Village Estate. The approved development was identified as stages 14, 16, 17 and 18 of the Terranora Village Estate.

It is noted that to date, stages 14, 16, 17A and 18 have been undertaken with proposed Stages 17B and 17C, to which this application relates, being the stages left as part of the subject application to be developed.

Several amendments have been made to the approval at various times, as highlighted below:

S96/9066 Approved on 5 May 2000.

S96/0066.01 Approval was granted on 2 February 2005 for the introduction of an additional stage (Stage 14B) as bulk earthworks (importation of 50,000m³ of fill for road construction).

S96/0066.08 Approval granted on 24 September 2007 for an amendment to lot sizes and configuration of lots previously approved in Stage 14C, 16 and 18 – no increase in yield.

S96/0066.09 Approved on 11 January 2008 for the relocation of carparking / bus bay area; relocation of 1000m² passive open space to allow for the new parking areas; and relocation of footpaths.

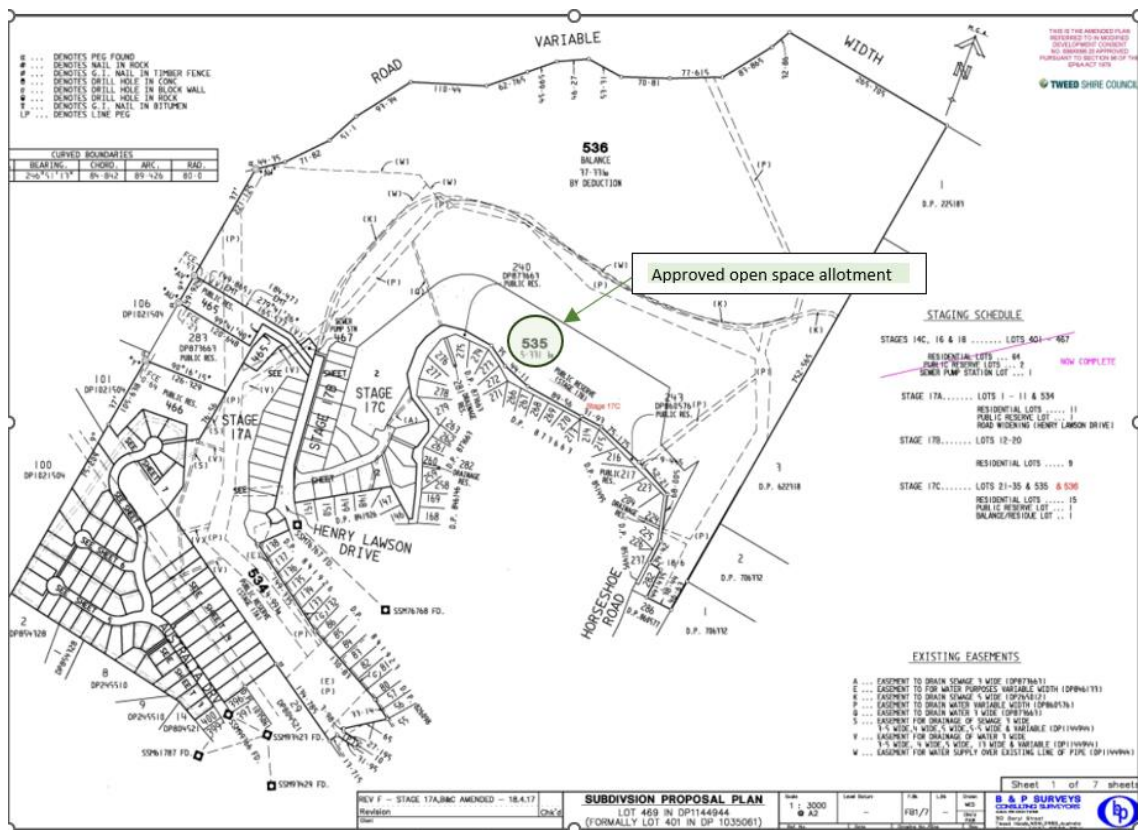
S96/0066.10 Approval granted on 4 August 2008 for a S96 (2) application to remove a maximum of 8,000m³ excess rock boulder material from the site over a 3 month period.

S96/0066.13 Approval granted on 1 April 2010 for a S96 (1) application to defer the dedication of three large 'public reserve' lots from the Stage 14C to Stage 17.

S96/0066.19 Reconfiguration of lot layout of existing approved Stage 17 Lots to the west of Henry Lawson Drive. Furthermore Stage 17 was also separated into stage 17A and Stage 17B. Stage 17A related to the west of Henry Lawson Drive, while 17B related to the remainder of land.

S96/0066.20 Reconfiguration of Stage 17B to introduce Stage 17B and 17C. The reconfiguration did not result in a change to the total area approved for residential allotments in this area, however the amendments did result in one additional residential allotment being provided in this area.

Approved Overall Subdivision Layout



PROPOSED EASEMENTS

- B --- PROPOSED RIGHT OF CARVEWAY BENEFITTING LOTS 12 & 13
- U --- ACCESS EASEMENT 1 WIDE
- Z --- ADJUT PROTECTION ZONE 4 WIDE (POSITIVE CONSTRAINT)
- Y --- EASEMENT TO DRAIN WATER 1 WIDE, 4+5 WIDE, 4 WIDE & VARIABLE WIDTH
- X --- EASEMENT TO DRAIN SEWAGE 1 WIDE & 4+5 WIDE

EXISTING EASEMENTS

- A --- EASEMENT TO DRAIN SEWAGE 1 WIDE (DP178613)
- B --- EASEMENT TO DRAIN SEWAGE 1 WIDE VARIABLE WIDTH (DP141911)
- C --- EASEMENT TO FOR WATER PURPOSES VARIABLE WIDTH (DP141911)
- D --- EASEMENT TO DRAIN SEWAGE 1 WIDE (DP141911)
- E --- EASEMENT TO DRAIN WATER 1 WIDE (DP141911)
- F --- EASEMENT TO DRAIN SEWAGE 1 WIDE (DP141911)
- G --- EASEMENT TO DRAIN SEWAGE 1 WIDE (DP141911)
- H --- EASEMENT TO DRAIN SEWAGE 1 WIDE (DP141911)
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- L --- EASEMENT TO DRAIN SEWAGE 1 WIDE (DP141911)
- M --- EASEMENT TO DRAIN SEWAGE 1 WIDE (DP141911)
- N --- EASEMENT TO DRAIN SEWAGE 1 WIDE (DP141911)
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- P --- EASEMENT TO DRAIN SEWAGE 1 WIDE (DP141911)
- Q --- EASEMENT TO DRAIN SEWAGE 1 WIDE (DP141911)
- R --- EASEMENT TO DRAIN SEWAGE 1 WIDE (DP141911)
- S --- EASEMENT TO DRAIN SEWAGE 1 WIDE (DP141911)
- T --- EASEMENT TO DRAIN SEWAGE 1 WIDE (DP141911)
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- V --- EASEMENT TO DRAIN SEWAGE 1 WIDE (DP141911)
- W --- EASEMENT TO DRAIN SEWAGE 1 WIDE (DP141911)
- X --- EASEMENT TO DRAIN SEWAGE 1 WIDE (DP141911)
- Y --- EASEMENT TO DRAIN SEWAGE 1 WIDE (DP141911)
- Z --- EASEMENT TO DRAIN SEWAGE 1 WIDE (DP141911)

NOTES

- 1 --- DUNED LAND USE ZONE 1 RURAL LANDSCAPE (TWOED LOCAL ENVIRONMENTAL PLAN 2014)
- 2 --- DUNED LAND USE ZONE 1 RURAL LANDSCAPE (TWOED LOCAL ENVIRONMENTAL PLAN 2014)

PROPOSED EASEMENTS

- B --- PROPOSED RIGHT OF CARVEWAY BENEFITTING LOTS 12 & 13
- U --- ACCESS EASEMENT 1 WIDE
- Z --- ADJUT PROTECTION ZONE 4 WIDE (POSITIVE CONSTRAINT)
- Y --- EASEMENT TO DRAIN WATER 1 WIDE, 4+5 WIDE, 4 WIDE & VARIABLE WIDTH
- X --- EASEMENT TO DRAIN SEWAGE 1 WIDE & 4+5 WIDE

EXISTING EASEMENTS

- A --- EASEMENT TO DRAIN SEWAGE 1 WIDE (DP178613)
- B --- EASEMENT TO DRAIN SEWAGE 1 WIDE VARIABLE WIDTH (DP141911)
- C --- EASEMENT TO FOR WATER PURPOSES VARIABLE WIDTH (DP141911)
- D --- EASEMENT TO DRAIN SEWAGE 1 WIDE (DP141911)
- E --- EASEMENT TO DRAIN WATER 1 WIDE (DP141911)
- F --- EASEMENT TO DRAIN SEWAGE 1 WIDE (DP141911)
- G --- EASEMENT TO DRAIN SEWAGE 1 WIDE (DP141911)
- H --- EASEMENT TO DRAIN SEWAGE 1 WIDE (DP141911)
- I --- EASEMENT TO DRAIN SEWAGE 1 WIDE (DP141911)
- J --- EASEMENT TO DRAIN SEWAGE 1 WIDE (DP141911)
- K --- EASEMENT TO DRAIN SEWAGE 1 WIDE (DP141911)
- L --- EASEMENT TO DRAIN SEWAGE 1 WIDE (DP141911)
- M --- EASEMENT TO DRAIN SEWAGE 1 WIDE (DP141911)
- N --- EASEMENT TO DRAIN SEWAGE 1 WIDE (DP141911)
- O --- EASEMENT TO DRAIN SEWAGE 1 WIDE (DP141911)
- P --- EASEMENT TO DRAIN SEWAGE 1 WIDE (DP141911)
- Q --- EASEMENT TO DRAIN SEWAGE 1 WIDE (DP141911)
- R --- EASEMENT TO DRAIN SEWAGE 1 WIDE (DP141911)
- S --- EASEMENT TO DRAIN SEWAGE 1 WIDE (DP141911)
- T --- EASEMENT TO DRAIN SEWAGE 1 WIDE (DP141911)
- U --- EASEMENT TO DRAIN SEWAGE 1 WIDE (DP141911)
- V --- EASEMENT TO DRAIN SEWAGE 1 WIDE (DP141911)
- W --- EASEMENT TO DRAIN SEWAGE 1 WIDE (DP141911)
- X --- EASEMENT TO DRAIN SEWAGE 1 WIDE (DP141911)
- Y --- EASEMENT TO DRAIN SEWAGE 1 WIDE (DP141911)
- Z --- EASEMENT TO DRAIN SEWAGE 1 WIDE (DP141911)

NOTES

- 1 --- DUNED LAND USE ZONE 1 RURAL LANDSCAPE (TWOED LOCAL ENVIRONMENTAL PLAN 2014)
- 2 --- DUNED LAND USE ZONE 1 RURAL LANDSCAPE (TWOED LOCAL ENVIRONMENTAL PLAN 2014)

S96/0066.22 & .23 These modifications proposed an increase in number of lots to 110, extension of an approved road and deletion of open space to be dedicated to Council from one location and to be provided in another location. The application was refused by the Land & Environment Court in Horseshoe Properties Pty Ltd v Tweed Shire Council.

As discussed later in this report, the subject DA would have the effect of modifying consent S96/0066 by removing Stage 17C. This would result in the deletion of the approved residential allotments from Stage 17C, as well as the open space area identified for dedication. The land area identified for residential lots in Stage 17C would become future development Lot 165 under the current application. It is expected that a suitable condition of any approval would be imposed in accordance requiring such modification in accordance with section 4.17(5) of the Environmental Planning and Assessment Act 1979 and section 67 of the Environmental Planning and Assessment Regulation 2021.

It is noted that as part of the most recent approved plan related to the above consent, open space is provided in the existing approved Lot 535 which is consistent with Tweed Shire Councils site Specific DCP B1 mapping data.

Area E comprises an infill urban release area in the Banora Point/Terranora residential area and presents an opportunity to consolidate the urban footprint by providing housing opportunities for approximately 3,500 people.

Whilst possessing land suitable for urban purposes, Area E also contains extensive areas of environmentally significant vegetation and coastal wetlands and needs to respect the existing urban fabric, whilst ensuring the efficient use of land.

In 2004 a comprehensive Local Environmental Study (LES) was prepared to support the rezoning of 'Area E' to accurately reflect its ability to accommodate urban land uses and environmental qualities of the land. In October 2007, the findings of the LES were realised through the gazettal of an amendment to the Tweed Local Environmental Plan 2000. This amendment gave rise to the zonings applicable to Area E and included an area specific clause requiring, amongst other things, the preparation of a Development Control Plan.

In 2009, an application under Part 3A of the Act was made to NSW Department of Planning (MP09_0166). The application was amended to address various uses raised by Council, State Agencies, and the NSW Department of Planning. Whilst the Part 3A Major Project Approval does not endeavour development on the subject land, it anticipates infrastructure to service the proposed development in accordance with the DCP. In addition to the MP09_0166 approval and to accommodate the approved subdivision under the Part 3A Major Project, there is a VPA for expenses associated with construction of the Broadwater Parkway, Structured Open Space, drainage, and environmental restoration. The VPA was finalised in 2014 however, to date no works have been approved/commenced to initiate the infrastructure works in the VPA.

During an exceptional rain event in February 2022, a landslide occurred, impacting sections of the land (and Council land additional private land beyond the subject site). A PTV REF has been submitted to Council for the landslide remediation works, characterised as "Environmental Protection Works". The PTV REF is still being considered on its merit having regard to geotechnical stability, stormwater drainage and ecological matters. The subject application is heavily dependent on the successful stabilisation of land in order for the development to proceed.

Strategic Planning framework

Having regard to the matters for consideration under the strategic planning framework to which the subject land is bound by the following assessment comments are provided:

i. North Coast Regional Plan 2041

NCRP Objective 1: Provide well located homes to meet demand.

The proposal is well-located, being adjacent to an existing residential area, however the housing product offered does not respond appropriately to meet the demands currently facing the region. The NCRP includes a goal whereby, "40% of new housing by 2036 will either be 'multi-dwelling', like apartments, town houses, villas, or small lot housing." It can be inferred from the Landscape Master Plan that the only typology offered in this proposal are single detached dwellings.

NCRP Objective 2: Provide for more affordable and low cost housing.

It is not apparent from the landscape master plan that the proposal offers the housing diversity aspired to in Objectives 1 and 2 of the *NCRP 2041*. There are minimal differences presented among lot size, layout and configuration, highlighting a single product offering. This apparent lack of housing typology and choice offered in the proposal adds further pressure to an already tight housing market and does not sufficiently respond to the Regional Plan's aspirations for increasing housing affordability across the north coast.

ii. Tweed Local Strategic Planning Statement 2020

Deliver housing supply and associated infrastructure to meet the needs of a growing population whilst sensitive environmental and agricultural hinterlands are protected.

- There is a clear distinction between developable land and extensive environmental management zone within the site's northern half, which is a key environmental asset for the proposed development and surrounding communities. It is unclear whether the land affectations and proximity of development to the wetland is appropriate, regarding the potential impacts resulting from drainage, earthworks and groundwater/surface flows.

Promote housing that is affordable, diverse, adaptive and well located to meet the needs of our changing population and lifestyle.

- There is no clear indication of housing diversity presented in the land.
- There is no clear indication of housing diversity presented in the landscape master, with seemingly single detached dwellings only proposed on the lots.
- The current housing crisis calls for a greater array of housing typologies in residential areas to maximise the options for housing at a range of prices – by offering a limited/ no range of product, this does not address the needs of the area's growing population and diverse demographic.
- Active transport connections from the proposed development to surrounding community infrastructure, such as Lindisfarne Anglican Grammar School (the school), are poor or non-existent. The resulting effect means increased reliance on private vehicle use (as public transport not an option in this location) and vehicle traffic through/ around existing neighbourhoods.

2. 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),*
- (b) *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.

It is noted that the proposal is considered to be (which are considered further in this report):

- Integrated Development (s4.46)
- Requiring concurrence/referral (s4.13)

There is insufficient information to demonstrate the proposal is not:

- Designated Development (s4.10)

a) 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 Environmental Planning & Assessment Regulation 2021 (“**the Regulations**”) 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 (Biodiversity and Conservation) 2021*
- *State Environmental Planning Policy (Planning Systems) 2021*
- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021*
- *Tweed Local Environmental Plan 2014*
- *Tweed Local Environmental Plan 2000*
- *Tweed Development Control Plan 2008*
 - *Section A3 – Development of Flood Liable Land*
 - *Section A5 – Subdivision Manual*
 - *Section A6 – Biting Midge and Mosquito Controls*
 - *Section A13 – Socio – Economic Impact Assessment*
 - *Section A15 – Waste Minimisation and management*
 - *Section A16 – Preservation of Trees or Vegetation*
 - *Section A19 – Biodiversity and Habitat Management*
 - *Section B1 – Terranora*
 - *Section B24 – Area E Urban Release Development Code*

A summary of the key matters for consideration arising from these State Environmental Planning Policies are outlined in **Table 3** and considered in more detail below.

Table 3: Summary of Applicable Environmental Planning Instruments

EPI	Matters for Consideration	Comply (Y/N)
State Environmental	Chapter 3: Koala Habitat applies to RU2 zoned land.	N

Planning Policy (Biodiversity & Conservation) 2021	Chapter 4: Koala Habitat applies to RU5 and R1 zoned land.	N
State Environmental Planning Policy (Planning Systems) 2021	Chapter 2: State & Regionally Significant Precincts. <ul style="list-style-type: none"> The site is not located within state significant precinct. Section 2.19(1) and Clause 2 of Schedule 6 of <i>State Environmental Planning Policy (Planning Systems) 2021</i> declares the proposal regionally significant development as: <p style="margin-left: 40px;"><i>3 General development over \$30 million</i></p> <p style="margin-left: 40px;"><i>Development that has an estimated development cost of more than \$30 million</i></p> 	N/A Y
SEPP (Resilience & Hazards)	Chapter 2: Coastal Management Chapter 4: Remediation of Land	N N
State Environmental Planning Policy (Transport and Infrastructure) 2021	Chapter 2: Infrastructure <ul style="list-style-type: none"> Section 2.48(2) (Determination of development applications—other development) – electricity transmission - the proposal is satisfactory subject to conditions. Section 2.121(4) - Traffic-generating development pursuant to Schedule 3 (200+ lots). TfNSW raise no specific concerns subject to appropriate environmental impact assessment of any road works (by council) and appropriate construction traffic management measures. 	Y Y
Tweed Local Environmental Plan 2000	<ul style="list-style-type: none"> Clause 4 – Aims of the Plan Clause 5 – ESD Principles Clause 8 – Consent considerations Clause 11 – Zone objectives Clause 15 – Essential Services Clause 16 – Height of Building Clause 17 – Social Impact Assessment Clause 19 – Subdivision General 	N N N N N N/A N Y

	<ul style="list-style-type: none"> • Clause 20 – Subdivision in Zones 1 (a), 1 (b), 7 (a), 7 (d) and 7 (l) • Clause 25 – Development in Zone 7 (a) Environmental Protection (Wetlands and Littoral Rainforests) and on adjacent land <p><i>Consent must not be granted to the carrying out of development on land within Zone 7 (a) or on land adjacent to land within Zone 7 (a) unless the consent authority has taken into consideration—</i></p> <ul style="list-style-type: none"> <i>(a) the likely effects of the development on the flora and fauna found in the wetlands or littoral rainforest, and</i> <i>(b) the potential for disturbance of native flora and fauna as a result of intrusion by humans and domestic and feral animals, increased fire risk, rubbish dumping, weed invasion and vegetation clearing, and</i> <i>(c) a plan of management showing how any adverse effects arising from the development can be mitigated, and</i> <i>(d) the likely effects of the development on the water table, and</i> <i>(e) the effect on the wetlands or littoral rainforest of any proposed clearing, draining, excavating or filling.</i> • Clause 31 – Development adjoining waterbodies • Clause 33 – Obstacles to aircraft • Clause 34 – Flooding • Clause 35 - Acid Sulfate Soils • Clause 38 – Future road corridors • Clause 39 – Remediation of contaminated land • Clause 39A – Bushfire protection • Clauses 40-46 (Aboriginal) • Clause 54 – Tree preservation order 	<p>Y</p> <p>N- see below subclause considerations</p> <p>N</p> <p>Y</p> <p>Y</p> <p>N</p> <p>Y</p> <p>N</p> <p>Y</p> <p>N</p> <p>N</p>
Tweed Local Environmental Plan 2014	<ul style="list-style-type: none"> • Clause 1.2 – Aims of the Plan • Clause 2.3 – Zone objectives and Land Use Table • Clause 4.1-1A – Minimum subdivision lot size • Clause 4.3 – Height of buildings • Clause 4.4 – Floor Space Ratio • Clause 4.6 – Exceptions to development standards • Clause 5.21 – Flood Planning 	<p>N</p> <p>N</p> <p>N</p> <p>N/A</p> <p>N/A</p> <p>N/A</p> <p>Y</p>

	<ul style="list-style-type: none"> • Clause 6.1 – Arrangements for designated State public infrastructure • Clause 7.1- Acid Sulfate Soils • Clause 7.2 – Earthworks • Clause 7.6 – Stormwater Management • Clause 7.8A – Airspace Operations – Gold Coast Airport • Clause 7.10 – Essential Services 	Y Insufficient information N Insufficient information Y N
Tweed Development Control Plan 2008	<ul style="list-style-type: none"> • Section A3 – Development of Flood Liable Land • Section A5 – Subdivision Manual • Section A6 – Biting Midge and Mosquito Control • Section A14 – Socio-economic impact assessment • Section A15 – Waste Minimisation and Management • Section A19 – Biodiversity and Habitat Management • Section B1 – Terranora • Section B24 - Area E Urban Release Development Code 	Y N N N Y N N N

Consideration of the relevant SEPPs is outlined below.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

The site occurs within the Tweed Coast Koala Management Area (Tweed Heads KMA) identified in the approved Tweed Coast Comprehensive Koala Plan of Management 2020 (TCCKPoM). This plan is recognised as an approved plan of management under Chapter 3 and Chapter 4 of this policy.

The aims of these Chapters are to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas to ensure a permanent free-living population over their present range and reverse the current trend of koala population decline.

Pursuant to Clause 3.8 and 4.8 of the policy, Councils determination of a development application must be consistent with the approved TCCKPoM that applies to the land.

The application includes a Biodiversity Development Assessment Report (BDAR) prepared by JWA Ecological Consultants Pty Ltd. The submitted BDAR fails to adequately address Part 5 of the TCCKPoM which sets out standards for the assessment of Koala habitat, requirements for koala habitat protection and restoration and guidance on development layout and design.

Key deficiencies of the BDAR with respect to the TCCKPoM include:

- A Koala Habitat Assessment or Koala Activity Assessment in accordance with the TCCKPoM has not been completed.
- Part 5.9 Koala habitat protection and restoration and Part 5.10 Development layout and design have not been addressed.

Based on the deficiencies of the BDAR mentioned above, the proposal fails to satisfy the matters for consideration under Clause 3.8 and 4.8 of this policy and therefore Council is unable to determine the application favourably pursuant to Clause 3.8(2) of this policy.

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 2: Coastal management

The aim of this Chapter is to promote an integrated and co-ordinated approach to land use planning in the coastal zone in a manner consistent with the objects of the [Coastal Management Act 2016](#), including the management objectives for each coastal management area, by—

- (a) managing development in the coastal zone and protecting the environmental assets of the coast, and
- (b) establishing a framework for land use planning to guide decision-making in the coastal zone, and
- (c) mapping the 4 coastal management areas that comprise the NSW coastal zone for the purpose of the definitions in the [Coastal Management Act 2016](#).

Pursuant to Clause 2.3 (which nominates the 4 coastal management areas), the site is mapped to contain Coastal Wetlands and Coastal Wetlands proximity area to the northern extent of the land, adjacent to the Duroby Creek. The Wetlands contain an Endangered Ecological Community (“**ECC**”) (Saltmarsh) and suspected native fish habitat.

In addition to the above, the subject land has steep topographical values, high ground water vulnerability, contains Class 1, 2 and 5 Acid Sulfate Soils, is affected by Q100 flooding, has been subject to landslips and requires a form of Environmental Protection Works to remediate the slip (see further discussion later in this report).

Clause 2.7 of the SEPP states:

*(1) The following **may be carried out on land identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent—***

- (a) the clearing of native vegetation within the meaning of Part 5A of the Local Land Services Act 2013,*
- (b) the harm of marine vegetation within the meaning of Division 4 of Part 7 of the Fisheries Management Act 1994,*
- (c) the carrying out of any of the following—*
 - (i) earthworks (including the depositing of material on land),*
 - (ii) constructing a levee,*
 - (iii) draining the land,*
 - (iv) environmental protection works,*
- (d) any other development.*

....

(2) Development for which consent is required by subsection (1), other than development for the purpose of environmental protection works, is declared to be designated development for the purposes of the Act.

The applicant, in their SEE, outlines caselaw in which a subdivision that included (but did not fragment) mapped coastal wetland land was not designated development (see *Goldcoral Pty Ltd (Receiver and Manager Appointed) v Richmond Valley Council* [2024] NSWLEC 77). The applicant has expressed an opinion that on the basis of the above caselaw, that in the circumstances of this

case, a balance lot (proposed Lot 163) will be created from the subdivision of Lot 13 DP 1264394 that maintains the existing boundary alignment along the eastern northern boundaries and incorporates the whole of the coastal wetland located on that lot within the balance lot. Similarly, proposed Lot 364 within Lot 3 DP 622318 will be a balance lot maintaining the current western and northern boundaries and incorporates the whole of the coastal wetlands located on Lot 3 DP 622318 within the balance lot. The applicant concludes that on this basis, there will be no further fragmentation or 'division' of the coastal wetland as a result of the development and accordingly, the development is not considered to be designated development for the purposes of the Act.

The above caselaw does address that subdivision of land that does not fragment the mapped coastal wetlands or littoral rainforest is not designated development (and more recent decisions uphold this precedent, see *Investments NQ Pty Ltd v Tweed Shire Council* [2024] NSWLEC 1108). However, there is insufficient information to determine whether the proposal would trigger thresholds under Clause 2.7(1)(b),(c)(i) or (c)(iii).

The applicant, in their SEE (Appendix 4) states the following:

The development will have no impact on the tidal inflows or direct rainfall received by the coastal wetlands which are the dominant sources of water supporting its biophysical, hydrological and ecological integrity.

Council officers have considered this report and are not satisfied that it considers the stormwater discharge/surface flow of water into the wetland. Furthermore, given the constraints of the land (previously mentioned in this discussion) and the lack of information available to determine the extent of works required to accommodate additional stormwater drainage (based on further stormwater catchment studies) (see discussion later in this report) combined with additional hydrogeological (groundwater) studies and reviews, management plans to address remediation works, there is potential that the proposal would require ancillary works in very close proximity to or in the wetland. Furthermore, the discharge of increased freshwater (stormwater) in the wetland will cause harm to marine vegetation pursuant to Clause 2.7(1)(b).

It is worthy of noting that the development also includes clearing of native vegetation within the "proximity area for coastal wetlands". As accepted in *Reysson Pty Ltd v Minister Administering the Environmental Planning and Assessment Act 1979* [2020] NSWCA 281 and *Planners North v Ballina Shire Council* [2021] NSWLEC 120; land identified as "coastal wetlands" includes "proximity area for coastal wetlands" thus triggering thresholds under Clause 2.7(1) of this policy.

In the absence of sufficient engineering stormwater catchment studies to satisfy Clause 7.6 of TLEP2014, alternate sewer strategies having regard to relevant matters for consideration under Clause 6.1 and Clause 7.10 of TLEP2014, appropriate management plans for remediation (to satisfy Clause 4.6 of SEPP (Resilience and Hazards) 2021, environmental studies and related information which delineates how the various constraints for the subject site can be addressed without encroaching into, or causing harm to marine vegetation within the mapped wetland, the consent authority cannot be satisfied that the development is not designated development within the meaning of the Act.

In addition to the above, Clause 2.7(4) states:

A consent authority must not grant consent for development referred to in subsection (1) unless the consent authority is satisfied that sufficient measures have been, or will be, taken to protect, and where possible enhance, the biophysical, hydrological and ecological integrity of the coastal wetland or littoral rainforest.

To determine the extent of impact, additional information would be required. However, direction is taken from the following local policies and plans which the proposal fails to comply with.

The Cobaki and Terranora Broadwater Coastal Zone Management Plan 2011

In order to provide a direction for managing Tweeds estuaries in the Cobaki and Terranora locality, Council has adopted the Cobaki and Terranora Broadwater Coastal Zone Management Plan 2011. This plan provides Council's integrated management planning framework to achieve estuary management objectives, including but not limited to:

- improving water quality and ecosystem health by revegetation/regeneration of riparian vegetation, prioritising the mid – transition zones of all creeks and their ephemeral drainage lines;
- restoring riparian habitat to enhance connectivity of wildlife corridors;
- improving rural stormwater discharge quality and ecosystem health by facilitating and supporting best practice land management and functional On-site Sewage System Facilities (OSSF);
- increasing community awareness and protection of areas important to Aboriginal cultural heritage;
- protecting viable commercial fishery industries by preserving and improving fish habitat, including marine vegetation such as seagrass and saltmarsh and improving fish passage;
- stabilising degraded creek bed and banks, to restore their natural values, improve downstream instream health, and reduce the infilling of the broadwaters; and
- increasing community awareness and protection of areas important to Aboriginal cultural heritage.

Catchment Values

Riparian Zone – Vegetation and Geomorphology

The Cobaki and Terranora Broadwater Coastal Zone Management Plan 2011 states:

In areas where development is proposed, anywhere adjacent to the broadwater foreshores, Terranora Creek or Bilambil, Durroby, Cobaki and Piggabeen Creeks, a minimum 50m buffer is recommended. The recommended buffer distance to rural land uses in non-tidal sections of Bilambil, Durroby, Cobaki and Piggabeen Creeks is 30m. Generally, buffers should be fully revegetated with appropriate local native riparian species.

Based on the limited information available in the application and the physical “development footprint” (not including ancillary works), the proposed “development footprint” is setback 15m to the Coastal Wetland which is likely to allow for the landward movement of sensitive marine vegetation habitat under a range of tidal scenarios and projected sea level rise horizons.

The proposed urban footprint fails to acknowledge the recommended setbacks in The Cobaki and Terranora Broadwater coastal zone management plan and the effect of this is likely to have irreversible permanent impact on the wetland environment. This is iterated in the NSW DPI – Fishery comments appended to this report.

The proposal in its current form is considered inconsistent with the NSW Wetland Policy 2010 principles and respective NSW Coastal Design Guidelines 2023 to:

- o Protect and enhance water quality, hydrological systems and coastal processes;
- o Identify, protect and enhance sensitive coastal ecosystems and threatened ecological communities.

Cultural Heritage Values

This section of the policy identified that there are extensive areas of the creeks' catchments with a high probability for containing sites of cultural significance. As previously identified in this report, the DA25/0011 – NRPP Assessment Report- 217 lot residential subdivision, with conservation lot and associated civil works and vegetation removal, environmental facility, recreation areas and environmental protection works (Integrated Development)– 7 August 2025

site is mapped located in an area affected by Predictive Aboriginal Place of Heritage Significance in the Tweed Byron Aboriginal Cultural Heritage Management Plan.

The submitted application includes a report based on a site inspection undertaken by Tweed Byron Aboriginal Land Council ("TBLALC") dated 31 January 2023. The TBLALC report does not clearly outline the scope of the development application that the assessment relates to. As a result, the Aboriginal cultural heritage assessment submitted with the Development Application does not include plans of the proposal at the time from which to understand the degree of material change between January 2023 and December 2024.

As such, this application was referred to TBLALC. TBLALC provided return comments that indicate the scoping of the submitted report and the proposed development are dramatically different and that this warrants further investigation by a licensed archaeologist.

In addition, the SEE completed by Zone Planning Pty Ltd (dated 19 December 2024) refers to the TBLALC report and states that an Aboriginal Heritage Information Management System (AHIMS) search was undertaken (Attachment Q of the SEE). The SEE does not include the AHIMS search, search number, the geographic extent of the search or the date of the search.

Given the disparity between the scoping that formed the findings in the report by TBLALC (dated 31 January 2023) submitted with the DA and the scope of the proposal, it is considered that there is insufficient information to ensure that the development does not compromise any Aboriginal cultural heritage values or places on the site.

Chapter 4: Remediation of Land

The provisions of Chapter 4 of *State Environmental Planning Policy (Resilience and Hazards) 2021* ("the **R&H SEPP**") have been considered in the assessment of the development application. Section 4.6 of the Resilience and Hazards SEPP 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. In order to consider this, a Preliminary Site Investigation ('PSI') has been prepared for the site.

The PSI has recommended that the site is suitable for the proposed use subject to 'remedial type' works including waste removal (stockpiles/debris) and vertical mixing via earthworks.

Having regard to the recommendations in the PSI and to satisfy the heads of consideration under this Section of the policy (i.e. that the land will be suitable after remediation), a Detailed Site Investigation ("**DSI**") and/or Remediation Action Plan ("**RAP**") is required. Any such reporting would need to comply with the NSW EPA Statutory Guidelines and address the following key aspects of remediation/investigation works:

1. Delineate the spatial and vertical extent of zinc and lead hotspots, including additional sampling and analysis.
2. Asbestos is flagged as a potential concern due to the existing shed and former structures, but no testing has been reported. Hazardous materials require investigation prior to soil disturbance.
3. If waste materials are to be generated for off-site disposal or processing during remediation, a waste classification report is required.

The above referenced information is not included in the application and therefore there is insufficient information to satisfy Section 4.6 of this policy. The application is therefore recommended for refusal on these grounds.

It is further noted that given the environmental constraints of the land and the lack of information regarding spatial and vertical extent of zinc and lead hotspots, it is unclear what the impact of the remediation works would be on the geotechnical stability of the land and whether such works would impact the receiving wetland.

State Environmental Planning Policy (Planning Systems) 2021 ('Planning Systems SEPP')

Chapter 2: State and Regional Development

The proposal is *regionally significant development* pursuant to Section 2.19(1) as it satisfies the criteria in Clause 2 of Schedule 6 of the Planning Systems SEPP as the proposal is development has an estimated development cost of more than \$30 million. Accordingly, the Northern Regional Planning Panel is the consent authority for the application. The proposal is consistent with this Policy.

A review of the proposal and associated operations indicates that there is insufficient information to determine whether the proposal is State Significant development having regard to Clause 24 in Schedule 1 of this policy which relates to remediation of contaminated land that is category 1 remediation work (noting a remediation action plan is potentially required to satisfy Clause 4.6 of SEPP (Resilience and Hazards) 2021 and further information is required to satisfy Clause 7.10 of TLEP2014).

State Environmental Planning Policy (Transport and Infrastructure) 2021

Pursuant to Section 2.48(2) of this policy, the application was referred to Essential Energy. The application is considered to be satisfactory in terms of risk to safety and general comments have been provided to this effect.

Pursuant to Section 2.122(4) and Schedule 3 of the policy, the proposal is considered to be traffic generating development given the development yield is greater than 200 lots. The application was referred to Transport for NSW ("TfNSW") and no objections were raised in response to the referral subject to appropriate environmental impact assessment of any road works (by Council) and appropriate construction traffic management measures. It is noted that Council officers have reviewed the proposal having regard to the likely impacts to traffic and road network and concerns are raised to this effect. Refer to further discussion under Section A2 of the DCP, provided later in this report.

Local Environmental Plans

The proposed development relates to land which is mapped under the Tweed Local Environmental Plan 2014 and the Tweed Local Environmental Plan 2000 per the zoning map in the Figure below.

authority is satisfied that the allotment will be used for a purpose, other than for an agricultural or residential purpose, for which consent could be granted”.

The land zoned 1(a) Rural and 7(a) Environmental Protection is proposed to be included within public reserve lots and will not be further divided or fragmented as a result of the proposal. Furthermore, Clause 19(4) of TLEP2000 states:

“Consent is not required for a subdivision effected for the purposes of widening a public road, creating an allotment for use by a public utility undertaking, or as a public reserve or the like, notwithstanding that an allotment created by the subdivision may not comply with the minimum lot size applicable to the zone in which the land is situated”.

The creation of the public reserve lot zoned 1(a) and 7(a), sought to be dedicated to Council under Section 49(1) of the Local Government Act 1993, is consistent with the provisions of Clause 19(4).

A summary of the key matters for consideration and non-compliances arising from the relevant EPIs are outlined in further detail below.

Tweed Local Environmental Plan 2000

The primary objectives of 1(a) Rural zone are:

- *to enable the ecologically sustainable development of land that is suitable primarily for agricultural or natural resource utilisation purposes and associated development.*
- *to protect rural character and amenity.*

The secondary objectives of 1(a) Rural zone are:

- *to enable other types of development that rely on the rural or natural values of the land such as agri- and eco-tourism.*
- *to provide for development that is not suitable in or near urban areas.*
- *to prevent the unnecessary fragmentation or development of land which may be needed for long-term urban expansion.*
- *to provide non-urban breaks between settlements to give a physical and community identity to each settlement.*

The proposal is inconsistent with these zone objectives for the following reason:

- The proposed development fails to include sufficient information to demonstrate ecologically sustainable development of land that is conducive to the natural values of the land being part of coastal wetlands environment. The lack of information in relation to ecological management and impacts, drainage analysis and impacts, remediation processes and actions and Acid Sulfate Soil management give rise to potential irreversible impact and harm to the wetland.

The primary objectives of the 7(a) Environmental Protection (Wetlands and Littoral Rainforests) zone are:

- *to identify, protect and conserve significant wetlands and littoral rainforests.*
- *to prohibit development which could destroy or damage a wetland or littoral rainforest ecosystem.*

The secondary objectives of the 7(a) Environmental Protection (Wetlands and Littoral Rainforests) zone are:

- *to protect the scenic values of wetlands and littoral rainforests.*

- to allow other development that is compatible with the primary function of the zone.

The proposal is considered to be inconsistent with these zone objectives for the following reasons:

- The proposed development fails to include sufficient information to ensure that the wetlands are clearly identified and delineated from the development site, as well as protected and conserved during and post development works.
- There is insufficient information to demonstrate that aquatic ecosystems and fish habitat are protected in accordance with the objectives of this zone and Fisheries Management Act 1997.
- The potential degradation of the wetland as a result of the works associated with the subject application would likely impact the scenic values of the wetland environment.

General Controls and Development Standards

The TLEP2000 also contains controls relating to development standards, miscellaneous provisions and local provisions. The controls relevant to the proposal are considered in **Table 4** below.

Table 4: Consideration of the TLEP2000 Controls

Control	Requirement	Proposal	Comply
Minimum subdivision lot size (CI 20(2)(a) & CI 20(3))	40Ha except if not agricultural or residential purpose, which consent could be granted or to be created as Public Reserve.	Public Reserve Lots. Accordingly, consent may be granted under Clause 20(3) or is alternatively not required under Clause 19(4).	Yes
Development in 7(a) zone and on adjacent land (CI 25(3))	Consent must not be granted to the carrying out of development on land within Zone 7 (a) or on land adjacent to land within Zone 7 (a) unless the consent authority has taken into consideration— (a) the likely effects of the development on the flora and fauna found in the wetlands or littoral rainforest, and (b) the potential for disturbance of native flora and fauna as a result of intrusion by humans and domestic and feral animals, increased fire risk, rubbish dumping, weed invasion and vegetation clearing, and (c) a plan of management showing how any adverse effects arising from the development can be mitigated, and (d) the likely effects of the development on the water table, and (e) the effect on the wetlands or littoral rainforest of any proposed clearing, draining, excavating or filling.	There is insufficient information to satisfy the matters for consideration. In particular and without limitation, the following information is missing to allow a proper assessment of the Clause 25(3) matters: <ul style="list-style-type: none"> • Remediation Action Plan/ Detailed Site Investigation; • BDAR to address KPoM; • Catchment details and design for stormwater management; • Review of hydrogeological qualities of the land pre and post development with relevant sufficient information; • Acid Sulfate Soil (ASS) Management Plans to address relocated treated ASS fill; and • Information to address matters raised by NSW Fisheries and NSW Water. 	No
Development adjoining waterbodies (CI 31(3))	Consent must not be granted to development on land to which this clause applies, within such distance as is determined by the consent	Insufficient information - Refer to comments by Water NSW.	No

	<p>authority of the mean high-water mark or, where there is no mean high-water mark, the top of the bank or shore of a stream, creek, river, lagoon or lake unless it is satisfied that—</p> <p>(a) the development will not have a significant adverse effect on scenic quality, water quality, marine ecosystems, or the biodiversity of the riverine or estuarine area or its function as a wildlife corridor or habitat, and</p> <p>(b) adequate arrangements for public access to and use of foreshore areas have been made in those cases where the consent authority considers that public access to and use of foreshore areas are appropriate and desirable requirements, and</p> <p>(c) the development is compatible with any coastal, estuary or river plan of management adopted by the Council under the Local Government Act 1993 that applies to the land or to land that may be affected by the development, and</p> <p>(d) the development addresses the impact of increased demand from domestic water supply on stream flow.</p> <p>(e) the development addresses the likely impact of biting midge and mosquitoes on residents and tourists and the measures to be used to ameliorate the identified impact.</p>		
Flood planning (CI 34)	<p>Where, in the consent authority's opinion, land is likely to be subject to flooding, then it must not grant consent to development on that land unless it has considered—</p> <p>(a) the extent and nature of the flooding hazard affecting the land, and</p> <p>(b) whether or not the development would increase the risk or severity of flooding of other land in the vicinity, and</p> <p>(c) whether the risk or severity of flooding affecting the development could be reasonably mitigated, and</p> <p>(d) the impact of the development on emergency services, and</p> <p>(e) the provisions of Section A3—Development of Flood Liable Land of <i>Tweed Development Control Plan</i>.</p>	<p>The property is affected in the northern portion by 'low flow' flooding. All new greenfield subdivisions are required to fill the land to the Climate Change Flood Planning Level of 3.4m AHD. The engineering drawings detail the proposed allotments are filled above 3.4m AHD.</p> <p>The lowest level bio-retention basin has a perimeter access road at 2.7m AHD, which is located above the design flood level. The proposed park located on Lot 157 is proposed to be filled to 1.9m AHD. Section A5 of the DCP allows local parks to be filled to the DFL 1m AHD.</p> <p>All allotments have access roads to land above PMF. The proposed subdivision therefore</p>	Yes

		complies with the provisions of this Clause.	
Acid sulphate soils (CI 35)	<p>A person must not, without development consent, carry out works on land shown as being Class 1, 2, 3, 4 or 5 land on the series of maps held in the office of the Council and marked “<i>Acid Sulfate Soil Planning Map</i>”, being the works specified for the class of land in the following Table—</p> <p>Class 2: Works below the ground surface Class 5: Works within 500m Class 1,2,3 or 4 land which is likely to lower the water table below 1m AHD in adjacent Class 1,2,3 or 4 land.</p>	The submitted ASSMP contains insufficient information to demonstrate compliance with Clause 35 and NSW Acid Sulfate Soils Management Guidelines (ASSMAC,1998). See key issues for further discussion.	No
Future Road Corridors (CI 38)	<p>Development, other than exempt development or agriculture, must not be carried out on land in or adjoining a future road corridor shown on the zone map, except with development consent.</p> <p>The consent authority must not grant consent unless it has considered the effect of that development on the future alignment of the road corridor.</p>	The proposal does not encroach into any future road corridor alignment noting the structure plan for Area E which contains future Broadwater Parkway does not encroach on the subject land.	Yes
Remediation of contaminated land (CI 39)	The objective of this Clause is to ensure that contaminated land is adequately remediation prior to development occurring. Clause 39(2) refers to Chapter 4 of SEPP (Resilience and Hazard) 2021.	Refer to previous discussions regarding the lack of information to satisfy Chapter 4 of the SEPP.	No
Bushfire Protection (CI 39A)	<p>The objective of this Clause is to minimise bushfire risk to build assets and people and to reduce bushfire threat to ecological assets and environmental assets.</p> <p>Clause 39A (3) refers to Planning for Bushfire Protection in accordance with the document prescribed by the EP&A Regional 2021.</p>	The subject application is defined as subdivision and therefore forms Integrated Development requiring a Section 100B Bushfire Safety Authority Certificate from NSW RFS. Whilst the Section 100B Bushfire Safety Authority Certificate has been issued by the relevant authority (RFS), the 100B has been issued based on APZ’s encroaching into public land (to be dedicated to Council). Furthermore, there is a proposed “performance solution” in which a “no Fuel Zone” (aka managed land) will be required for an area that is either mapped EEC or associated ecological buffer for the EEC. This area of land would therefore likely require	No

		<p>vegetation clearing and ongoing management as a “No Fuel zone”.</p> <p>Clause 39A(2)(e) states that in determining whether to grant consent to development in areas that, in the opinion of the consent authority, are likely to be affected by bushfire, the consent authority must take into account the environmental and visual impacts of the clearing of vegetation for bushfire hazard reduction.</p> <p>Whilst the proposed APZ has been accepted by the RFS and the Section 100B Bushfire Safety Authority Certificate has been issued, Council does not accept the impact of the vegetation removal for the “No Fuel Zone’ in the Environmental Management Area” at the head of Road 5 in Stage 4 of the subdivision. In addition, Council does not accept the maintenance burden of maintaining the APZ on future public land, particularly in the circumstances of this case where access to the APZ adjacent to the perimeter road will be limited due to topographical constraints.</p> <p>It is further noted that the bushfire report makes recommendations for bushfire protection based on the proposed staging of the development. However, this is not contemplated in the staging or engineering plans.</p> <p>For the above reasons, the application is therefore recommended for refusal having regard to the developments failed performance against the provisions of this Clause.</p>	
Heritage (CI 40-46)	Clause 44 (1) states the consent authority may grant consent to the carrying out of development on an archaeological site that has Aboriginal heritage significance (such as a site that is the location of an Aboriginal place or a relic within the meaning of the <i>National Parks and Wildlife Act</i>	The site is mapped to contain Predictive Aboriginal Cultural Heritage. Tweed Byron Local Aboriginal Land Council (TBLALC) have requested that an Aboriginal Cultural Heritage Assessment (ACHA) be	No

	<p><u>1974</u>), or a potential archaeological site that is reasonably likely to have Aboriginal heritage significance only if—</p> <p>(a) it has considered an assessment of how the proposed development would affect the conservation of the site and any relic known or reasonably likely to be located at the site prepared in accordance with any guidelines for the time being notified to it by the Director-General of National Parks and Wildlife, and</p> <p>(b) except where the proposed development is integrated development, it has notified the local Aboriginal communities (in such a way as it thinks appropriate) of the development application and taken into consideration any comments received in response within 21 days after the notice was sent, and</p> <p>(c) it is satisfied that any necessary consent or permission under the <u>National Parks and Wildlife Act 1974</u> has been granted.</p> <p>(2) The consent authority may grant consent to the carrying out of development on an archaeological site that has non-Aboriginal heritage significance or a potential archaeological site that is reasonably likely to have non-Aboriginal heritage significance only if—</p> <p>(a) it has considered an assessment of how the proposed development would affect the conservation of the site and any relic known or reasonably likely to be located at the site prepared in accordance with any guidelines for the time being notified to it by the Heritage Council, and</p> <p>(b) (Repealed)</p> <p>(c) it is satisfied that any necessary excavation permit required by the <u>Heritage Act 1977</u> has been granted.</p>	<p>prepared on behalf of a licensed archaeologist given:</p> <ul style="list-style-type: none"> - the intervening time between now and when the submitted report was prepared (January 2023); and - the proposal is now drastically different to the extent of development briefed and assessed for the January 2023 report. 	
Clause 54 – Tree Preservation Order	<p>(3) A tree preservation order may—</p> <p>(a) prohibit the ringbarking, cutting down, topping, lopping, removing or wilful destruction of any tree or trees to which the order applies without development consent, and</p> <p>(b) relate to any tree or trees or to any specified class, type or description of tree on any land, with the exception of trees—</p>	<p>There is insufficient information to demonstrate the provisions of Tree Protection Order (TPO) 1990, 2004, 2011 can be complied with and no request has been made to revoke or amend the TPO.</p>	No

	<p>(i) in a State forest or a forest reserve within the meaning of the <u>Forestry Act 1916</u>, or</p> <p>(ii) in a national park within the meaning of the <u>National Parks and Wildlife Act 1974</u>, or</p> <p>(iii) required to be lopped for overhead electricity line safety.</p> <p>(4) Any consent required by such an order is taken to be required by this clause.</p> <p>(5) A tree preservation order, and any revocation or amendment of it, does not have effect until it has been published in a newspaper circulating in the area of Tweed.</p> <p>(6) A tree preservation order made and in force immediately before the appointed day under any instrument that applied to land to which this plan applies shall be deemed to be a tree preservation order made and published by the Council under this clause and may be revoked or amended by the Council in accordance with this clause.</p>		
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Based on the development's performance against the zone objectives and statutory considerations tabled above, the proposal is considered to be inconsistent with the TLEP2000.

Tweed Local Environmental Plan 2014

The objectives of the applicable RU2 Rural Landscape zone are:

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

The proposal is generally consistent with these zone objectives given that the area of land zoned RU2 is provided as a public reserve in the proposed subdivision layout. The residue land zoned RU2 will be less than the minimum lot size. The applicant, in their SEE, has stated that it intends to excise this portion of land pursuant to the Exempt development provisions contained in Subdivision 38 (Clause 2.75) of SEPP (Exempt and Complying Development Code) 2008. Given it will be dedicated public land, it is not affected by the minimum lot size (see Clause 4.1 TLEP2014 discussion later in this report) and therefore the reduced lot size for this land is not a matter for consideration under this application given that such is provided for as Exempt development in the above-mentioned SEPP (Exempt and Complying Development Code) 2008.

In principle, the provision of land dedicated to public reserve is considered appropriate. However, it is noted that the appropriate buffer distances from the wetland environment have not been provided in the circumstances of this proposal. This gives rise to concern regarding higher order EPI's (i.e. Chapter 2 of SEPP (Resilience and Hazards) 2021 as opposed to the RU2 zone objectives.

The planned Open Space in the RU5 land, adjacent to the RU2 zone would enable a land area that incorporates the required buffers to form consolidated environmental protection areas and dedicated open space that could be co-located and appropriately managed. However, there are other meritorious matters for consideration under other Sections of the Act that would potentially render the co-located Open Space as inappropriate having regard to biodiversity values, the approved footprint in line with the masterplan and matters of public interest. It is therefore considered reasonable to address the particulars of those assessment considerations elsewhere in this report in the first instance.

Only once the meritorious considerations are addressed, could the consent authority accept the proposed land use and dedication of land to Council for Environmental Management Area and Open Space in the RU2 zone. Regardless, the proposal is not inconsistent with the RU2 – Rural Landscape zone objectives.

The objectives of RU5 Rural Village zone are:

- *To provide for a range of land uses, services and facilities that are associated with a rural village.*
- *To ensure that new development responds to and respects the character of a rural village.*

The proposal is inconsistent with these zone objectives for the following reasons:

- The proposal lacks adequate provisions for services and infrastructure to support the proposed rural village.
- There is insufficient information to determine whether the proposed impact to vegetation removal responds to the desirable character of the rural village. This is particularly relevant given that under the Terranora Locality Plan in Section B1 of the DCP, the subject land forms planned Open Space (“Hilltop Park”) and this is provided for in the existing consent for the subject land.
- The submitted information in the subject application identifies that land on Lot 13 DP1264394, which is zoned RU5, supports Lowland Rainforest EEC and may have habitat restoration values. However, these values cannot be appropriately managed and responded to under the current proposal given the land forms rural/residential subdivision in a location that was not anticipated to be urban land. The lack of open space in this location (per the Locality Plan under Section B1 TDCP2008) gives rise to a form of development that fails to respect the desirable character of the “rural village” in which the urban footprint is delineated by the provision of Open Space and also fails to respond to ecological principles to “avoid” impact to EEC.

The objectives of R1 General Residential zone are:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To encourage the provision of tourist accommodation and related facilities and services in association with residential development where it is unlikely to significantly impact on amenity or place demands on services beyond the level reasonably required for residential use.*

The proposal is inconsistent with these zone objectives for the following reasons:

- The proposal fails to deliver a lot layout that provides the anticipated variety of housing types and densities having regard to the absence for adequate provision for small lot medium

density housing to the northern aspect of proposed development on Lot 3 DP622318 and the structure plan in Section B24 of the DCP.

- The proposal lacks adequate provisions for services and infrastructure to support the housing needs of the community as far as roads/access, potable water supply, sewer and stormwater are concerned.
- There is insufficient information available to determine whether the land is suitable for residential development having regard to matters for consideration under Chapter 4 SEPP (Resilience and Hazards) 2021.

General Controls and Development Standards

The LEP also contains controls relating to development standards, miscellaneous provisions and local provisions. The controls relevant to the proposal are considered in **Table 5** below.

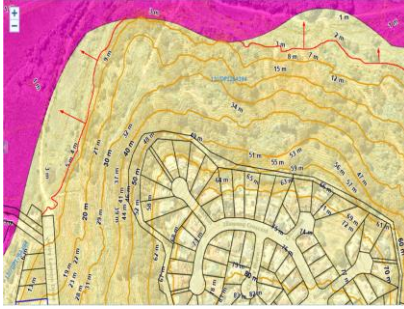
Table 5: Consideration of the TLEP2014 Controls

Control	Requirement	Proposal	Comply
Minimum subdivision Lot size (CI 4.1)	RU2 – 40 Ha	RU2 land will be less than 40Ha. The proposal nevertheless satisfies Exempt Development provisions if the land is excised and dedicated to Council (as proposed) pursuant to Clause 2.75 SEPP (Exempt and Complying Development Codes) 2008. It is however noted that for such to occur, pursuant to Clause 1.16(3)(b), <u>no vegetation removal (for APZ's) can occur on land proposed to be creating public reserve under CI 2.75(e) of the SEPP.</u>	Yes subject to no veg. removal
	RU5 – 450sqm	267sqm – 2202sqm. Three (3) lots are less than the minimum lot size and are proposed to be dedicated drainage reserve. The proposal nevertheless satisfies Exempt Development provisions if the land is excised and dedicated to Council (as proposed) pursuant to Clause 2.75(f) SEPP (Exempt and Complying Development Codes) 2008. It is however noted that for such to occur, pursuant to Clause 1.16(3)(b), <u>no vegetation removal can occur on land proposed to be excised for drainage purposes</u>	Yes, subject to no veg. removal
	R1 – 450sqm	450sqm – 889sqm	Yes
Heritage (CI 5.10)	Development consent is required for any of the	The application is supported by a report that contains Aboriginal	No

	<p>following— [...] (d) disturbing or excavating an Aboriginal place of heritage significance, [...] (f) subdividing land— (i) on which a heritage item is located or that is within a heritage conservation area, or (ii) on which an Aboriginal object is located or that is within an Aboriginal place of heritage significance. (8) Aboriginal places of heritage significance The consent authority must, before granting consent under this clause to the carrying out of development in an Aboriginal place of heritage significance— (a) consider the effect of the proposed development on the heritage significance of the place and any Aboriginal object known or reasonably likely to be located at the place by means of an adequate investigation and assessment (which may involve consideration of a heritage impact statement), and (b) notify the local Aboriginal communities, in writing or in such other manner as may be appropriate, about the application and take into consideration any response received within 28 days after the notice is sent.</p>	<p>Cultural Heritage Management advice prepared by Tweed Byron Local Aboriginal Land Council (TBLALC). The report is dated 31 January 2023. Council officers referred the DA to TBLALC. TBLALC advised that at the time the advice was completed, the full scale of the proposed subdivision was not fully contemplated. However, the preliminary findings based on what was available at the time concluded that a subdivision did not present any significant risk of harm to Aboriginal Cultural Heritage.</p> <p>However, since the original inception of the subdivision in January 2023 and as the development footprint has evolved since then, TBLALC has been contemplating whether the Aboriginal community may have any broader concerns regarding the development footprint. Furthermore, TBLALC has expressed that it is likely that a more detailed ACH assessment report by a licensed archaeologist is warranted.</p> <p>Based on the return comments from TBLALC, there is insufficient information available to satisfy the matters for consideration under this Clause</p>	
Bushfire Hazard Reduction (CI.511)	<p>Bush fire hazard reduction work authorised by the Rural Fires Act 1997 may be carried out on any land without development consent.</p> <p>Note: The Rural Fires Act 1997 also makes provision relating to the carrying out of development on bush fire prone land.</p>	No bushfire hazard reduction works are planned.	No <i>*see discussion regarding developments performance against Rural Fires Act 1997.</i>
Flood Planning (CI 5.21)	Pursuant to Clause 5.21(2) development	The majority of the proposed subdivision is located above the	No

	<p>consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development—</p> <ul style="list-style-type: none"> (a) is compatible with the flood function and behaviour on the land and (b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and (c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and (d) incorporates appropriate measures to manage risk to life in the event of a flood, and (e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses. <p>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"> (a) the impact of the development on projected changes to flood behaviour as a result of climate change, 	<p>PMF and therefore evacuation provisions can be adequately catered for in accordance with Clause 5.21(2)(c) of this Clause.</p> <p>The property is affected in the northern portion by 'low flow' flooding. All new greenfield subdivisions are required to fill the land to the Climate Change Flood Planning Level (FPL) of 3.4m AHD. The engineering drawings detail the proposed allotments are filled above 3.4m AHD.</p> <p>Whilst, in principle, the proposal does not give rise to any concerns regarding the developments performance against Clause 5.21(2)(a),(b),(c), and (d), the development fails to include sufficient information to satisfy Clause 5.21(2)(e) in terms of the development's impact on the environment given that filling (earthworks) are proposed to achieve the required Climate Change FPL and the location of that filling is within the required ecological buffer areas adjacent to the mapped wetland environment.</p> <p>Further, as discussed later in this table, concerns are raised in relation to ASS management and whether processes of ASS management are adequate having regard to stormwater, groundwater vulnerability and the geotechnical stability of the land. As such, based on the absence of information and the location of the flood affected land (along the edges of the development site, adjacent to (and potentially within), the mapped wetland), the consent authority cannot be satisfied the development will not affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses. Further discussion regarding the particulars of earthworks, ASS, groundwater vulnerability etc. are discussed where relevant, throughout this report.</p>	
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	<p>(b) the intended design and scale of buildings resulting from the development,</p> <p>(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,</p> <p>(d) the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion.</p>		
Arrangements for designated State public infrastructure (CI 6.1)	<p>Development consent must not be granted for the subdivision of land in an urban release area if the subdivision would create a lot smaller than the minimum lot size permitted on the land immediately before the land became, or became part of, an urban release area, unless the Director-General has certified in writing to the consent authority that satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure in relation to that lot.</p>	<p>This provision applies to the eastern precinct, which is located in the Area E urban release area. This precinct was declared an urban release area upon adoption of the TLEP2014 in April 2014. With respect to Precinct 1 of the nearby Altitude Aspire development within Area E, the (then) Department of Planning and Environment provided Council with advice that satisfactory arrangements are in place for the DA pursuant to Clause 6.1 of the TLEP2014.</p> <p>On 14 March 2025, The Department supplied Council with a Certificate of Satisfactory Arrangements to satisfy Clause 6.1 for the subject DA.</p>	Yes
Public Utility Infrastructure (CI 6.2)	<p>Development consent must not be granted for development on land in an urban release area unless the Council is satisfied that any public utility infrastructure that is essential for the proposed development is available or that adequate arrangements have been made to make that infrastructure available when it is required.</p> <p>(2) This clause does not apply to development for the purpose of providing, extending, augmenting,</p>	<p>As discussed later in this report, the provision of water, sewer and road network capacity are inadequate for the proposal. In addition, there is insufficient information available to assess the stormwater infrastructure and whether it is adequate for the proposed development.</p> <p>Based on the lack of capacity in Councils public utility infrastructure and the premature nature of this development occurring before the provision of infrastructure in the vicinity, it is considered that essential public</p>	No

	maintaining or repairing any public utility infrastructure.	utility infrastructure is not available and that adequate arrangements have not been made to make those services available when required.	
Acid sulphate soils (CI 7.1)	Pursuant to Clause 7.1(2) development consent is required for the carrying out of works for Clause 2 ASS works below the natural ground surface or works by which the water table is likely to be lowered and for Class 5 ASS, works within 500m of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the water table is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land.	<p>The site contains Class 2 ASS and Class 5 ASS which is below 5m AHD (see map below).</p>  <p>The submitted ASS report identifies that the proposed residential subdivision involves excavation (e.g., sewer pump station to 3.5 m depth and stormwater management features to RL 1.5 m AHD).</p> <p>There is insufficient information available to ensure the proposal satisfies the provisions of this Clause.</p>	No
Earthworks (CI 7.2)	<p>Pursuant to Clause 7.3(3) before granting development consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider:</p> <ul style="list-style-type: none"> (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 	<p>There is insufficient information to consider the likely possible disruption of drainage patterns and soil stability and the effect of the development (bulk earthworks and Geotech works) on future dwellings. However, it is likely that such works will result in economically unviable dwelling construction.</p> <p>There is insufficient information to determine whether the quality of fill or soil to be excavated is not contaminated. There is also insufficient information to determine the effect of the earthworks on adjoining wetland (downslope), the likelihood of disturbing Aboriginal relics (noting TBLALC comments) and the impact on environmentally sensitive area (wetland).</p>	No

	<p>destination of any excavated material,</p> <p>(f) the likelihood of disturbing relics,</p> <p>(g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,</p> <p>(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development,</p> <p>(i) the proximity to, and potential for adverse impacts on, any heritage item, archaeological site, or heritage conservation area.</p>		
Stormwater Management (CI 7.6)	<p>Pursuant to Clause 7.6(3), development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development—</p> <p>(a) is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and</p> <p>(b) includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and</p> <p>(c) avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact.</p>	There is insufficient information to determine whether the proposed stormwater disposal and retention is appropriate for the site. As such, the consent authority cannot be satisfied the development satisfies the matters for consideration under this Clause particularly in regard to the cumulative effect of high groundwater vulnerability and its function, the flood affected nature of the edging of the development which is within proximity to the adjacent wetland and the existing stormwater discharge locations, and the geotechnical stability of the land.	No
Airspace Operations – Gold Coast Airport (CI 7.8)	Clause 7.8(2) states if a development application is received and the consent authority is satisfied that	The proposed subdivision does not involve any building works that would penetrate the limitation or Operations Surface	Yes

	the proposed development will penetrate the Limitation or Operations Surface, the consent authority must not grant development consent unless it has consulted with the relevant Commonwealth body about the application.	Layer for Gold Coast Airport and therefore referral is not warranted on this occasion.	
Essential Services (CI 7.10)	Development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required— (a) the supply of water, (b) the supply of electricity, (c) the disposal and management of sewage, (d) stormwater drainage or on-site conservation, (e) suitable vehicular access.	<p><u>Water:</u> The proposal suggests that the site can be serviced using the Rayles Lane large reservoir. The available capacity within this reservoir has been fully allocated to the higher elevations of Area E as well as infill development within the Terranora area. The allocation of this capacity is not available for the lower sections of Henry Lawson Drive and the areas within the proposed development would need to be supplied by the Mahers Lane reservoir which has not yet been constructed. As such the interim provisions for Stage 1 and 2 are not suitable and adequate arrangements for water supply for any part of the development is not available.</p> <p><u>Electricity:</u> The supply of electricity is available. The Civil Engineering Report indicates that Dial-Before-You-Dig records identify that there are existing electrical power supply services and Telstra infrastructure in the immediate area of the site. Existing underground electrical infrastructure extends to the frontage of Lindisfarne Anglican Grammar School within Mahers Lane. Underground cables are also available at the end of Henry Lawson Drive. NBN infrastructure is available along the full development frontage in Mahers Lane and at the end of Henry Lawson Drive.</p> <p><u>Sewage:</u> It is proposed that each allotment within the subject development will be connected to Council's sewage network via a gravity system discharging to a new sewer pump station (SPS) located on a separate allotment.</p>	No

		<p>This SPS will ultimately discharge to Banora Point Wastewater Treatment Plant. This sewer strategy is not supported by Council. The existing Sewage Pump Station (SPS) 3033 and the Sewer Rising Main (SRM) is at capacity and unable to accommodate any additional urban residential development beyond that already approved. Due to the low elevation of the sewer pump station the pumps will be producing approximately 80m head of pressure when pumping simultaneously with the SPS3033. This is excessive and further exacerbates the performance of SPS3033. The proposal is unacceptable to Council (as previously advised in the pre-lodgement comments) (note the maximum pressure Council is willing to accept is 50-55m head pressure).</p> <p>The proposed sewer system appears to be designed to a 50% AEP where the design requirements are to be for 20% AEP. The incorrect intensity factor has been applied (the correct value should be 59mm/hr). This is likely to further exacerbate the previously raised issue. There are further constraints within the SRM3033 SPS3033 system besides pressure. The available discharge and pump capacities at SPS3033 are limited and these aspects of the sewer strategy have not been suitably addressed.</p> <p><u>Stormwater drainage or onsite conservation:</u> There is insufficient information available to ensure that adequate arrangements have been made for stormwater drainage as discussed in response to Clause 7.6 above.</p> <p><u>Vehicular Access:</u> The proposed development will require access via an extension to Henry Lawson Drive and eventually through access to Mahers Lane. The surrounding</p>	
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		<p>road network has limited capacity to cater for any further development of land in the locality without the construction of new road infrastructure to alleviate the existing intersections at Terranora Road.</p> <p>The submitted Traffic Engineering Report (TIA) dated 09/01/2025 does not demonstrate that the intersection of Mahers Lane with Terranora Road will operate within its capacity upon completion, or at a projected 10 year horizon (2038 used in the Traffic Engineering report). This is because the analysis does not consider the intersections most significant 'peak hour' being 3:00 to 4:00pm. which coincides with the Lindisfarne School pick up time which results in the intersection being 'gridlocked' and queueing vehicles on Terranora Rd obstructing through traffic. Even though the Traffic Report does not model this, adding additional traffic to Mahers Lane from the proposed development will negatively impact the intersection.</p> <p>The Traffic Report SIDRAA results show that by 2033, the AM peak has a DOS of 0.845 (Proposed Stage 1 and 50% of Stage 2 traffic), exceeding the 0.8 recommended design capacity (includes Mahers Lane connection) and is an under estimate (because Mahers Lane connection is not supported). Regardless this highlights that Stage 1 and Stage 2 traffic relying on Henry Lawson Dr / Terranora Road Intersection for access will exceed the intersections design capacity DOS of 0.8 before 2033 which is unacceptable. It is also noted that the intersections DOS, without the proposed development at all, will have a DOS of 0.914 by 2038 in the a.m. peak which exceeds the design standard but remains just functional, and a p.m. DOS of 0.784).</p>	
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		Based on the above and the new road construction (Broadwater Parkway) being burdened upon other developers in the vicinity of the site via an approved VPA, the provision of access to the proposed subdivision is inadequate and the arrangements for road construction (in terms of timing) are inadequate to support the proposed development at this time.	
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*Clause 5.11 Discussion – Rura Fires Act 1997

The development does involve subdivision of bushfire prone land. Therefore, pursuant to Section 100B Rural Fires Act 1997, a Bushfire Safety Authority has been issued by NSW Rural Fire Service (RFS) following agency referral under Section 4.14 of the Environmental Planning & Assessment Act 1979.

The Bushfire Safety Authority (“**BFSA**”) and General Terms of Approval by the RFS rely upon a Bushfire Assessment Report prepared by Bushfire Risk Pty Ltd (dated 9 December 2024). The report includes APZ’s which extend beyond the perimeter road into proposed Lot 163 (Environmental Management Land to be dedicated to Council). In addition, there is a proposed performance solution for building envelopes in Lots 401-410 (stage 4). The performance solution includes the provision of a “No Fuel zone” on land to be dedicated to Council.

Council has a current policy that restricts fuel reduced area on Council owned or managed land (see Asset Protection Zones on Public Land Version 1.4, Adopted by Council on 3 December 2020).

The proposed APZ’s encroaching beyond the perimeter road and the accompanied performance solution is not accepted by Council due to the unaddressed impacts of vegetation removal and also the maintenance burden on Council to manage the land as a “no fuel zone”.

In the absence of the performance solution being instated, the setbacks at the location of the proposed Performance Solution will be reduced and the required BAL for those lots will therefore be greater than BAL 29. As BAL 29 is the maximum bushfire construction standard that an integrated subdivision may not exceed under Planning for Bushfire Protection 2019, the subdivision would fail to obtain a BFSA.

Based on the development’s performance against the zone objectives and statutory considerations tabled above, the proposal is considered to be inconsistent with Tweed LEP 2014.

(b) Section 4.15 (1)(a)(ii) - Provisions of any Proposed Instruments

Draft Conservation Zone (C Zone) TLEP 2014

The land mapped Coastal Wetland is current zoned 1(a) and 7(d) pursuant to TLEP2000, and on some periphery areas of the 1(a) and 7(d) zone (based on historic land application mapping), RU2 pursuant to TLEP2014.

Tweed Shire Council is currently working through a Staged C Zone Review which will involve separate application(s) to NSW DPHIE in accordance with the NSW Government instructions on how to apply zones for environmental protection based on ecological criteria.

Stage 1 maps are complete and in June 2025, a second in a series of Planning Proposals was submitted to NSW Government for gateway determination.

The site forms part of Stage 2 mapping area and will be subject to separate Planning Proposal in the future.

Council is of the opinion that there is strong ecological merit in applying the C2 (Environmental Conservation) Zone in the area of land mapped as Coastal Wetland. As outlined throughout this report, the proposal fails to satisfy statutory considerations that apply to the site having regard to the ecological values and these have formed reasons for refusal.

In the absence of sufficient information and based on the merits of the proposal, the consent authority cannot be satisfied the proposal satisfies the objectives of the C2 (Environmental Conservation) Zone which are:

- *To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.*
- *To prevent development that could destroy, damage or otherwise have an adverse effect on those values.*

Whilst the proposed instrument which would amend the zoning of the subject land has not been the subject of public consultation under this Act, the above is noted as a matter for consideration in terms of planning for future proposed instruments (TLEP2014).

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

The following Development Control Plan is relevant to this application:

- *Tweed Development Control Plan 2008*
 - *Section A2 Site Access and Parking Code*
 - *Section A3 Development of Flood Liable Land*
 - *Section A5 Subdivision Manual*
 - *Section A6 Biting Midge and Mosquito Control*
 - *Section A13 Socio Economic Impact Assessment*
 - *Section A16 Preservation of trees or vegetation*
 - *Section A19 Biodiversity and habitat management*
 - *Section B1 Terranora*
 - *Section B24 Area E Urban Release Development Code*

The application fails to satisfy the following Sections of the DCP:

Section A2 Site Access and parking Code

Section A2.2.2 Design Principles - Public Transport, Pedestrian and Cyclist Access and Amenity

The proposed development includes a substantial residential subdivision. The following controls under this Section apply to the proposal.

Detail, both on plan and within the Statement of Environmental Effects, the access and parking treatments pursued to optimise pedestrian, cyclist, public transport and disabled person's access to and within the site.

Proposals for large developments shall include a public transport impact statement. This statement shall contain:

- *Locality plan showing development site in relation to nearest practical public transport route and bus stops;*
- *Proposed means and standard of pedestrian access from nearest bus stop to development site;*

- Where development site is more than 50m from the nearest bus stop, evidence of negotiations with public transport operator to obtain bus route and stop adjacent to or closer to development;
- Proposed bus stop seating arrangements;
- Proposed arrangements for provision of bus stop within the development site (where applicable)

Section 8 'Servicing and Refuse Collection' of the submitted Traffic Engineering Report does not comment on the need for school buses to access the site. It fails to discuss the suitability of existing or future public transport for the proposal and if future bus services could be accommodated on the road network. For this reason, the consent authority cannot be satisfied that development controls under C11 of the DCP have been satisfied.

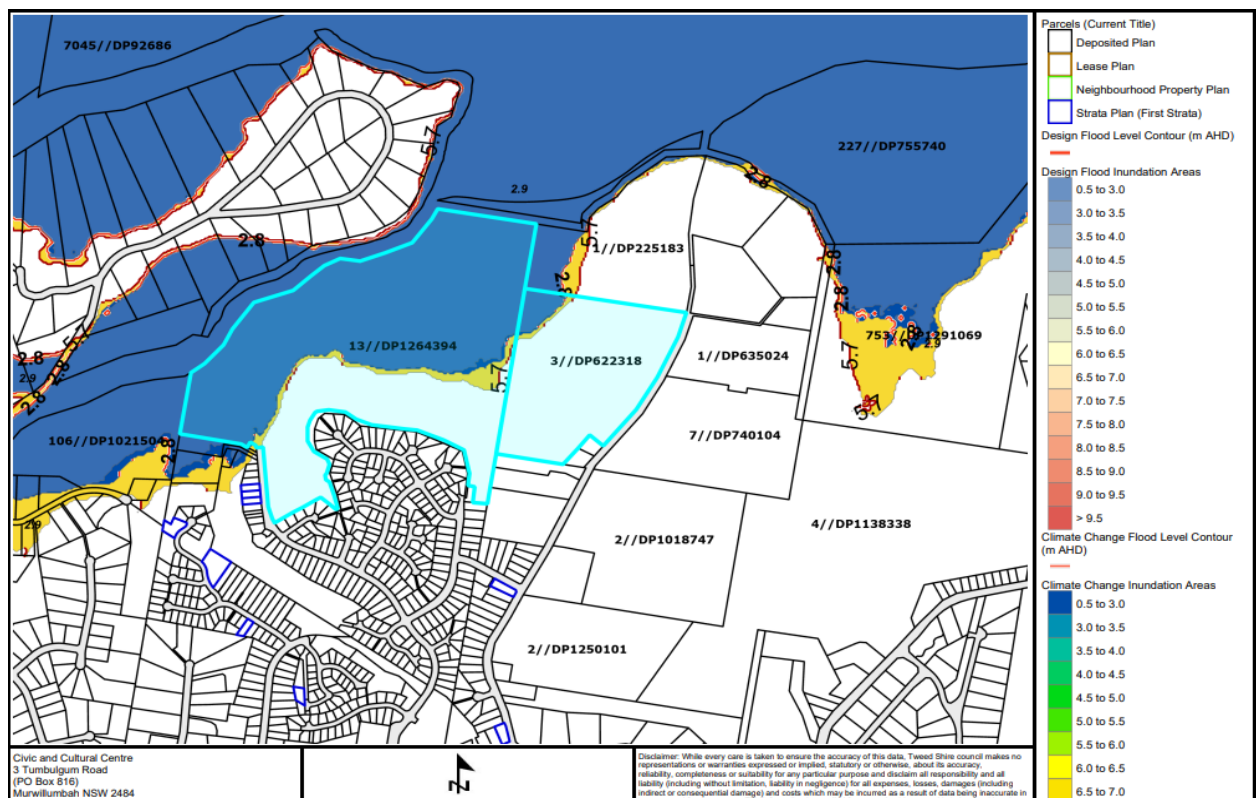
In addition to the above, there is poor and, in some circumstances, non-existent pedestrian connectivity within the subdivision to both proposed open space and existing infrastructure such as the school. This represents poor urban design outcomes in terms of providing pedestrian orientated development that compliments public transport (bus) networks and connects to public and private infrastructure (open space and schools).

Section A3 Development of Flood Liable Land

The land is flood affected. The following flood planning levels apply to the proposal:

- Design Flood Level 1% AEP (Annual Exceedance Probability) flood = 2.6m AHD
- Flood Planning Level = 3.1m AHD
- Climate Change Flood Planning Level = 3.4m AHD
- Probable Maximum Flood (PMF) = 5.8m AHD

Below is an extract of Councils GIS Maps demonstrating the extent of flood mapping over the site based on current topographical values of the land.



The property is affected in the northern portion by 'low flow' flooding. Pursuant to Section A3.2 of A3 (The Flood Mitigation Strategy), all new greenfield subdivisions are required to fill the land to the Climate Change Flood Planning Level of 3.4m AHD. The engineering drawings detail that the proposed allotments are filled above 3.4m AHD.

The lowest level bio-retention basin has a perimeter access road at 2.7m AHD, which is located above the design flood level.

The proposed open space located on proposed Lot 157 is proposed to be filled to 1.9m AHD which is permitted under Section A5 (parks are permitted to be filled to the design flood level – 1m).

Pursuant to Section A3.3.6, all new development is to have permanent high-level road/pedestrian evacuation route(s) to land above PMF level and/or adequate PMF refuge, subject to the recommendations of an acceptable Flood Response Assessment Plan.

A review of the proposed lot layout and engineer drawings demonstrates that all allotments have access roads to land above PMF.

Based on the above considerations, the proposed subdivision complies with relevant development controls under Section A3 of the DCP.

Section A5 Subdivision Manual

The aims of this Section of the DCP are:

- *Present Council's strategic plan objectives for the development of subdivisions.*
- *Achieve the highest quality and "best practice" of subdivision development in the Shire.*
- *Implement the policies and provisions of the NSW State Government in terms of seeking to achieve quality of subdivision planning and development.*
- *Provide guidelines and development standards for the development of subdivisions.*

This Section of the DCP applies to the whole of the Shire. However, pursuant to Section A5.2.5, in the event of any inconsistency between this Section and Part B of this DCP, the provisions of Part B shall prevail.

A5.4 URBAN SUBDIVISION DESIGN GUIDELINES & DEVELOPMENT STANDARDS

A5.4.4 Physical Constraints & Section A5.4.5

The objectives of this part of the DCP are:

- a) *To determine the existence, location and significance/magnitude of environmental constraints on the development site or on adjacent land that may constrain the proposed development.*
- b) *To ensure that the presence of environmental constraints are appropriately accounted for in the neighbourhood and subdivision design process.*
- c) *To conserve the environmental heritage of Tweed Shire and ensure that urban development does not adversely affect the heritage significance of heritage items and heritage conservation areas and their settings.*
- d) *To achieve urban forms that:*
 - *respond to the natural landform and drainage system in the layout of streets, open space and parks;*
 - *take advantage of topographical features of the site;*
 - *integrate with natural water and catchment systems and preserve/enhance natural watercourses and riparian vegetation;*
 - *avoid significant changes to the natural landform and large scale earthworks;*
 - *encourage building construction techniques that are responsive to the natural landform.*
- e) *To preserve the visual quality of the natural landform.*

- f) *To encourage land development to take place sequentially from the lower end of a catchment progressing upstream and, ensure as staged development proceeds that all necessary downstream/off site, drainage and stormwater quality treatment works are in place.*
- g) *To ensure the long-term safety of occupants of floodplain development*

The site is significantly environmentally and physically constrained in terms of slope, land stability, having high groundwater vulnerability, containing Acid Sulfate Soils, containing coastal wetland, forming bushfire prone land, having significant ecological value, being limited in terms of infrastructure capacity and being high visual and scenic quality.

As demonstrated in various parts of this report, the proposal fails to deliver appropriate buffer setbacks to the wetland, fails to adequately conserve and restore habitat and ensure that such can occur in conjunction with bushfire protection. The consent authority cannot be satisfied that the landform will not cause adverse impacts to the natural and built environment due to geotechnical and slope constraints. Furthermore, in the absence of information to demonstrate otherwise, it is likely that the scenic value of the site would be compromised by the proposal having regard to the proposed distribution of residential development, open space, roads and stormwater infrastructure which is contrary to the site specific DCP's that apply to the site.

The proposed urban footprint fails to acknowledge the environmental constraints of the land and is unlikely to achieve an urban footprint that responds to natural landform, an appropriate distribution of open space and parks, and will compromise the scenic quality of the site and surrounds having regard to vantage points that have views to the wetland environment.

The urban footprint is excessive and based on the criteria under Section A5.4.5 (Environmental constraints), fails to satisfy the above-mentioned objectives.

For this reason, the application is unworthy of support.

A5.4.6 Landforming

Natural topography is an important characteristic of an area. The extent of landform change to render a site suitable for subdivision should be kept to a minimum. site regrading should be sensitive to existing landforms and topography (of both the subdivision site and neighbouring areas) so that the natural setting may be preserved to the greatest extent possible. The subdivision should be designed to fit the topography rather than altering the topography to fit the subdivision.

The proposal includes provision of bulk earthworks as part of the Stage 1 phase of the development. The proposal fails to comply with Tweed Shire Council (TSC) Development Design Specification D6 – Site Regrading. To this end, the current landform is such that it is not suitable for residential development. The proposed gradients are also steeper than existing.

The following assessment considerations are provided having regard to the TSC Development Design Specification D6 requirements:

- The proposal includes provision of cut and fill for the entire residential development and therefore the application is required to address the 'Mass Landform Change Criteria' per D6.05.3.1 which states:

"The proportion of a subdivision site (plan area) that contains cut or fill areas with finished surface levels that depart from the natural surface levels by more than 5m shall not exceed 10%."

- The submitted Geotechnical Report fails to be cognisant of and refer to relevant prior information and reporting, and address any geotechnical concerns previously raised on the site (in previous NSW LEC proceedings);
- A preliminary review of the submitted Geotechnical Report gives rise to the following assessment comments:
 - Groundwater monitoring (p.13): only 2 observations over a 10 day period whereas this normally requires extended observations over seasonal variations.
 - Displacement monitoring (p.19): only commented on 7 weeks of data that shows 9mm of cumulative displacement. A much longer period of observation is required so that appropriate conclusions can be drawn.
 - Landslide remediation (p.20): referenced an outdated report from 2022 whereas should be referencing their report from 14.06.2024.
 - Slope stability / Factors of Safety: appears they are relying on one basic flawed conceptual advice that Council accepts FoS of 1.3 (p.27). The FoS of 1.3 is not acceptable. No contemporary residential developments utilising a FoS < 1.5 has been supported by Council. To this end, the industry standard of 1.5 needs to be applied for all situations. Landslip remediation for protective purposes is different to residential uses. Page 37 'Table 12' charts multiple FoS below 1.5.
 - Proposed lots near Henry Lawson Dr with proposed finished gradients of up to 68% creating lots with such steep gradients makes usability and general amenity for future owners very difficult. Establishing a stabilised grass cover and maintaining such steep slopes is also highly problematic.
 - Proposed construction solutions for dwellings in Stage 1 subdivision are not supported. Many lots require 20m deep soil nails at 1.5m grid spacing and geogrid as well.
 - Drainage comments on p. 44 indicate concrete flow spreaders are required for downslope stormwater discharge. The stormwater design by Biome nominates gabion structures for downslope stormwater discharge. For precautionary verification, the geotech report should confirm this stormwater solution is geotechnically satisfactory.
 - Level spreaders are depicted on SK302 and SK400 to openly discharge stormwater over the existing downhill landform in three locations. It is expected that redevelopment of this scale should implement a stormwater system to convey stormwater discharges to the bottom the slope to avoid reintroducing surface waters over this steep landform.
- Multiple locations of retaining walls exceed the maximum permitted height. Further to this point, the style of retaining wall, being sandstone blocks, are not considered appropriate for this situation, and alternative structurally sound independent retaining walls (eg – masonry) are recommended.
- The submitted Engineering Drawing SK221, Section 6, depicts a future ground level going across an adjacent property (Lot 2 DP 622318) that is not part of the DA. This needs to be excluded from the plans or a notation provided to explain why it is shown and landowner's consent provided.

Based on the above assessment comments, the proposal fails to comply with the majority development controls under Table A5-3 and therefore is inconsistent with the objectives of Section A5 of the DCP in relation to landforming.

A5.4.7 Stormwater Runoff, Drainage, Waterways and Flooding

As mentioned previously, there is insufficient information to assess the application having regard to the criteria under this Section of the DCP.

A5.4.8 Urban Structure

The objective of this Section is to:

- *facilitate an environmentally sustainable approach to urban development by minimising non-renewable energy use and car dependence; encouraging greater local selfcontainment of neighbourhoods and towns; and protecting key topographical, natural and cultural assets;*
- *provide safe, convenient and attractive neighbourhoods and towns that meet the diverse and changing needs of the community and offer a wide choice of housing, leisure, local employment opportunity and associated community and commercial facilities;*
- *provide neighbourhoods that are compact, understandable and walkable for a five to ten minute walk from most homes to a centre so that many daily needs may be met locally and which cluster to form towns with a high degree of street connectivity;*
- *provide traditional main street neighbourhood and town centres offering a mix of uses and linked by public transport to other centres;*
- *provide a movement network which has a managed, interconnected street network that clearly distinguishes between arterial routes and local streets, establishes good internal and external access for residents, maximises safety, encourages walking and cycling, supports public transport patronage and minimises the impact of through traffic;*
- *provide a network of well distributed parks and recreation areas that offer a variety of safe, appropriate and attractive public open spaces;*
- *to provide public utilities in a timely, equitable, cost efficient and effective manner;*
- *ensure a site responsive approach to urban development that avoids unjustifiable changes to the natural landform and large scale earthworks and responds to the topography, drainage system, flood risk, environmental constraints and natural features of the site in the location of street patterns, special places and open space networks to create a strong local character, identity, and sense of community.*

The criteria to achieve the above objectives is provided under Section A5.4.9 (Neighbourhood and Town Structure) of the DCP. The proposal fails to comply with the criteria under this Section based on the following assessment comments:

- There is no demonstrated connectivity to existing key private and public infrastructure and the existing urban form.
- The urban footprint extends beyond the “walkable” centre that was anticipated in the site specific DCP’s and therefore represents a sprawl of development that would have a detrimental impact on environmental qualities of the land.
- The proposal fails to provide the range of densities anticipated in the Section B24 plan and therefore fails to contribute to the required housing stock and affordability targets.
- No demonstrated bus network/stop locations to ensure that public transport corridors can be established and maintained between the existing urban form and the proposed residential development.
- The proposed road construction and network connectivity is inadequate.

Based on the above key considerations and matters already raised in this report, the proposal fails to satisfy the objectives of this part of Section A5.

A5.4.10 Movement Network

The proposal fails to satisfy the criteria under this Part of the DCP having regard to the following assessment comments:

- The western intersection of Road 1 and Road 2 is inappropriately designed. Severe road curvature at the intersection coupled with immediate grading of 15.95% is not considered to be an example of good road design.
- Road 3 is an excessively long cul-de-sac of over 200m in length and serving 24 lots. This is contrary to TSC Development Design Specification D1 – Road Design, specifically D1.09.05 (that states a maximum length of 100m and servicing 12 lots).
- Proposed road widths (per Drawing reference SK090) fail to comply with the minimum requirements. In particular, roads 1, 4 and 5 and Mahers Lane cross-section nominate “Resumption” for both sides of the road.
- A roll kerb is not supported for Road 5.
- The offset crown is not supported for Road 1.

A5.4.11 Open Space Network

The proposed fails to satisfy the performance criteria under this Section of the DCP having regard to the following assessment comments:

- The proposal includes a letter of offer for a voluntary planning agreement that indicates provision of structured open space. However, there is no detail supplied on how structured open space might be provided for.
- The proposal includes an oversupply of casual open space which is not required nor consistent with open space needs for the area. The dedication of such land to Council may have resource burdens on Council.
- The proposed “Environmental Pocket Park” is not acceptable as credited open space for recreation purposes as it does not comply with minimum requirements under the tables in A5-8.1 - A5-8.7 of Section A5. Furthermore, the quality of this land in terms of biodiversity values is not fully understood due to a lack of information to assess the ecological values of the land. The ongoing management and use of this land is therefore unclear.
- The provision and layout of open space and the public domain lacks connectivity and integration and is not consistent with the accepted methods to achieve good visual amenity, surveillance and security. Rather than fronting streets and residences, the parks front drainage reserves, vacant land and retaining walls. This is also a poor urban design outcome in terms of CPTED principles.

Proposed Neighbourhood Park

- The proposed neighbourhood park, adjacent to the existing tennis courts, has no interface to the public domain. The park orientates to a proposed drainage reserve, thereby limiting the opportunity to increase walkability, usability and promote a desirable streetscape interaction. In addition, the design features limited road frontage and separation from the existing park/tennis courts. The park therefore lacks opportunity for passive surveillance in line with principles of Crime Prevention through Environmental Design (“CPTED”).
- The proposed location of the open space fails to demonstrate that it appropriately compliments existing amenities in the existing park/tennis courts.

- Concerns are raised over the usability of the open space and appropriate grades/dimensions once the fill batter and drainage areas are finalised noting that the batter may encroach the buffer to the environmental land.
- Vehicle access (for services and public) is not provided and the road frontage is very limited (does not comply) given the shape of the park and neighbouring land uses.

Proposed Local Park

- The local park in Stage 2 fails to conform to the usable area in terms of configuration, shape and landform. It is not clear whether >80% is at a slope of less than 8% and that there is no encroachment of the drainage line/diversion.
- The size and layout of the play area is unsuitable due to its limited distance to the proposed road (therefore requiring fencing, which is an undesirable streetscape outcome).
- It is unclear whether there is provision for roadside/street parking. Given the steep surrounds, the ability of residents to walk to the park are limited and therefore without street parking the park as proposed would not be accessible to the local community.

A5.4.12 Lot Layout

The performance criteria for residential lot size and diversity (as it applies to the proposal) is as follows:

- *The structure plan is to make provision for variety of lot sizes and types to facilitate housing diversity and choice and meet the projected requirements of people with different housing needs.*
- *Lots must have appropriate area and dimensions to enable efficient siting and construction of a dwelling and ancillary outbuildings, provision of private outdoor space, convenient vehicle access to a public road and adequate parking.*
- *Smaller lots and lots capable of supporting higher density are to be located close to town and neighbourhood centres, public transport and adjacent to high amenity areas such as parks.*
- *Street and lot orientation and lot dimensions should facilitate the siting and design of dwellings. These should minimise non-renewable energy use and be appropriate for the climatic conditions. These should be a predominantly east-west and north-south street layout for temperate climates.*
- *Specific minimum geometric requirements for lots in each urban zone are detailed in Tables A5-9.1 to A5-9.10 (450sqm min.lot size for land on the site).*
- *Residential allotments must also comply with:*

- *Residential solar access, orientation and associated minimum dimensions*

Wherever possible, residential lots are to be orientated to facilitate siting of dwellings and private open space to take advantage of winter solar access and summer sun deflection. In this regard:

- (a) *70% of lots must be orientated to facilitate siting of dwellings to take advantage of solar access by ensuring the long axes of lots are within the range N20o W to N20o E, or E20o N to E30o S, see adjacent diagrams.*

- (b) North-facing slopes improve opportunities for solar access; small lots are therefore best suited to north-facing slopes with gradients of less than 15% (or 1:9).*
- (c) South-facing slopes impose a penalty on solar access; therefore, large lots/lowest densities are best suited to south-facing slopes or other areas where solar access is poor.*
- (d) Dimensioning the depth of north-south orientated lots to provide longer, narrower lots on the south side of the street and shorter, wider lots on the north side.*
- (e) Allotments are to be generally rectangular in shape and preferably not splayed.*
- (f) Lots with an east-west major axis are to have a minimum width of 14m.*
- (h) Infill lots must have no more than one third of its area covered by the shadow of an existing development on noon 21 June.*

Battle-axe or Hatchet Shape Allotments

- *Battle-axe lots must only be used where they can achieve adequate amenity for residents and neighbours, and enhance community safety, in situations including:*
 - o outlook over parks;*
 - o providing frontage to major streets;*
 - o elevated views;*
 - o providing vehicle access to sloping sites; and*
 - o in very limited circumstances, larger lots adequate for self-containment of a dwelling and its outlook.*
- *Aggregate access leg width must be a minimum of pavement width as designated in Table above plus width required for earthworks, batters, retaining walls, longitudinal drainage and services (absolute minimum additional 1.0m). For further details and standards for multiple leg accesses see Development Design Specification D1- Road Design."*
- *Battle-axe allotments must not be used for multi dwelling housing, dual occupancy, business, industrial, commerce and trade allotments.*
- *The area of battle-axe handles is not to be included in determining minimum lot sizes.*

Pursuant to the requirements under the above key sections of Section A5 of the DCP, the following assessment comments are provided:

- Lots 112 – 115 are in the cul-de-sac bulb of Road 3 and do not provide the minimum frontage of 12.5m as required by D1.09.5.
- The proposed 9m lot frontage for proposed Lot 411 is not supported.
- The proposed battle-axe Lots 403, 408 and 429 are not supported.
- The dual road frontage for Lot 429 is not supported.
- The dual road frontages for Lots 301 - 318 in Stage 3 are not supported.
- Concerns are raised over the future dwelling construction constraints on proposed Lot 409.

In addition to the above geometric issues, the following additional matters are raised in relation to the developments performance against relevant sections of Section A5.

Lot Design and Layout in Bushfire Prone Areas

This section states that in bushfire prone areas, subdivision design must ensure that each lot is provided with a building platform of minimum dimensions 10mx15m that is protected from a bushfire hazard by an APZ (see “Planning For Bushfire Protection - A Guide For Land Use Planners, Fire Authorities, Developers And Home Owners – NSW Rural Fire Service 2001”, and for infill development section 4.6 of the guide).

Once the APZ's are provided in accordance with the minimum requirements (and not encroaching onto future public land) and habitat restoration provided, it is likely that the APZ will encroach into many of the building envelopes in Stage 3 and 4 of the subdivision. Therefore, it is unlikely that the current layout will be consistent with this section as the building envelopes will be unachievable.

Frontage to parks and natural areas

As previously mentioned elsewhere, the proposed distribution of open space fails to respond the requirements under this section which states:

“Lots adjacent to parks or natural areas should be orientated to front parkland and natural areas to enhance amenity while contributing to personal and property security and deterrence of crime and vandalism. Frontage to parks may be achieved by a variety of lot layout solutions”.

Based on the above key considerations, the proposal fails to satisfy the performance criteria under this section and the lot layouts fail to respond to the desirable urban structure and form in relation to bushfire protection and lot orientation to integrate with open space networks and provide passive surveillance.

A5.4.13 Infrastructure

The performance criteria under A5.4.13 is provided below:

- *All lots created in urban areas for private occupation must be fully and individually serviced with sealed road (equipped with kerb and gutter both sides of the road) frontage, water supply, sewerage, underground electricity and telecommunications.*
- *A drainage system that provides Q100 immunity from local stormwater flooding and must have surface levels above the Q100 flood levels of regional river/creek flooding.*
- *Utilities and services are to be designed to minimise long term maintenance and ownership costs.*
- *Urban subdivision infrastructure must be provided in accordance with Table A5-10.*

The following assessment comments are provided to response to A5.4.13:

- As discussed previously in this report, there is limited capacity in the existing road network to support the proposed residential lots. Furthermore, there are limitations on planned capacity for reticulated sewage supply and water supply.
- In addition, there is insufficient information available to demonstrate stormwater drainage provisions for the site can cater for the catchment area in terms of quantity and quality of stormwater.
- As discussed later in this report, there is no mechanism to address the long term maintenance of environmental conservation land (and restoration areas) which are proposed to be dedicated to Council.

Based on the above key considerations, the proposal fails to satisfy the performance criteria under this section.

Section A6 - Biting midge and mosquito control

The aims of this Section of the DCP are:

- *Highlight the problems associated with biting midge and mosquitoes to residential and tourist developments generally within the coastal areas of the Tweed Council area;*
- *Provide desired guidelines for proposed and existing residential and tourist developments in Tweed Council coastal areas to minimise and control the problem of biting midge and mosquitoes;*
- *Inform, guide and assist applicants, developers, consultants, Council and general public of Council's guidelines for the control of biting midge and mosquitoes, particularly in relation to the preparation and submission of development applications and form a basis for negotiations should a departure from this provision of this plan be requested.*

Section A6.3.2 states that the first and most important action to take to minimise future biting insect nuisance in the Tweed Council area is to allow as greater open buffer area around the known and mapped insect breeding areas as is possible.

The application is supported by a Biting Insect Impact Assessment ("BIIA"). The BIIA recommends a number of controls for the proposed development, which include:

1. Establishing a biting insect buffer;
2. Eliminating standing water, which the report indicates will be controlled by the engineering of the site and well-designed stormwater management system and;
3. Stormwater system, with a bioretention system that won't hold water for more than 48 hours.

The proposed development is located near the Terranora Broadwater and Mahers Land and 'Bolsters Wetland' mosquito breeding and aerial treatment areas.

Council officers have reviewed the proposal including the BIIA to ensure that suitable buffers are provided to allow continued aerial treatment of the above areas.

Current NSW EPA guidelines stipulate a minimum 150 metre buffer zone must be maintained between the aerial treatment and any building, whether or not for human habitation. A review of Council's GIS maps for treatment areas and the proposed residential lots demonstrate that a minimum of 185m will be maintained between the Mahers Lane aerial treatment area and the proposed residential lots which satisfies current EPA guidelines.

As discussed elsewhere in this report, there is insufficient information to demonstrate that the stormwater management system is adequate for the proposal and therefore it is unclear as to whether the stormwater management and bioretention system will achieve the BIIA recommendations in relation to water elimination and storage, particularly in a storm event.

As such, whilst the proposed location of the buildings achieves the buffer distances for treatment of Broadwater and Mahers Land and 'Bolsters Wetland' mosquito breeding and associated aerial treatment areas, there is insufficient information available to determine that the stormwater management and disposal satisfies the recommendations in the BIIA. Accordingly, the application is considered to be incapable of support on these grounds.

Section A13 Socio Economic Impact Assessment

The main objectives of Section A13 of the DCP are to achieve maximum benefit for the community from development activity and mitigate negative impacts as well as achieve economic growth

DA25/0011 – NRPP Assessment Report- 217 lot residential subdivision, with conservation lot and associated civil works and vegetation removal, environmental facility, recreation areas and environmental protection works (Integrated Development)– 7 August 2025

through employment generating activities that adopt the concepts of Ecologically Sustainable Development.

Pursuant to Section A13.5, the proposed development provides for more than 50 lots in all stages and therefore is required to be accompanied by a Socio-Economic Assessment Report.

Alternative option/scenarios

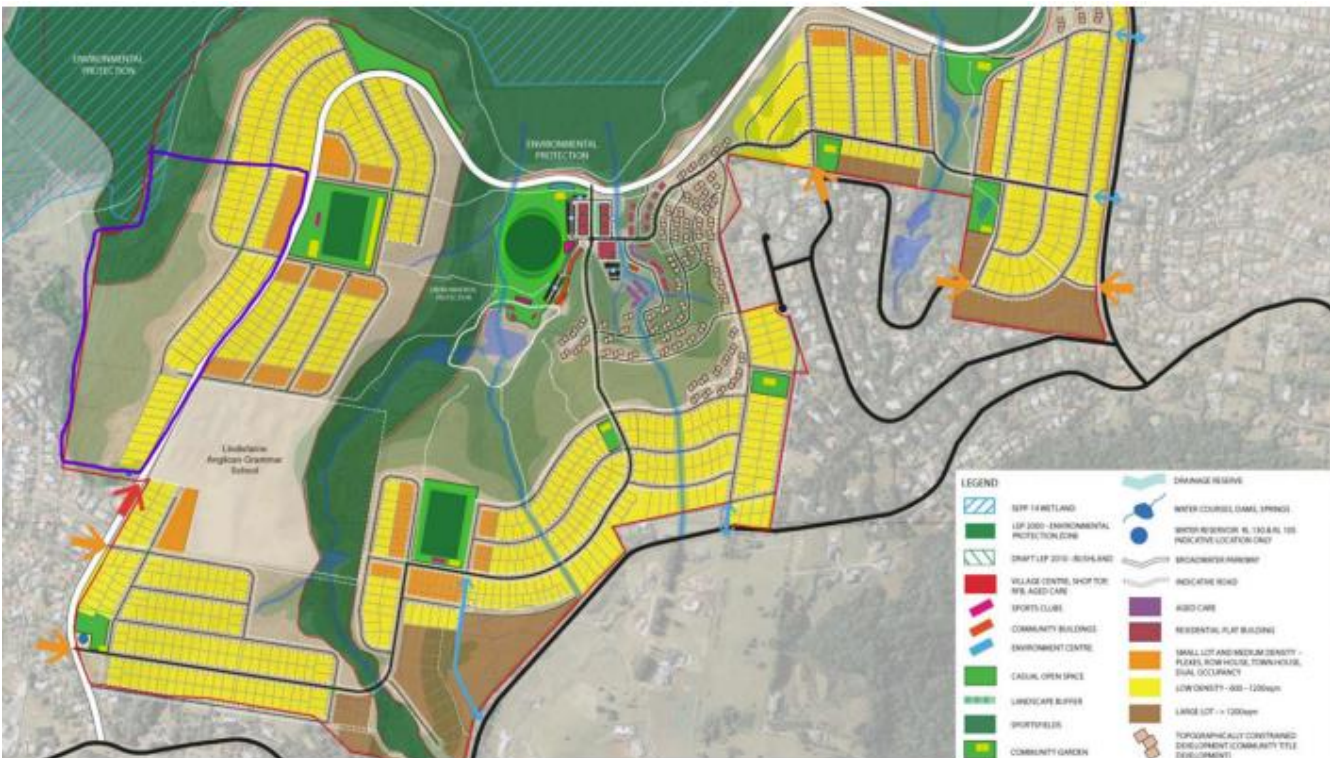
Section 2.3 of the Socio-Economic Impact Assessment report outlines alternatives to the proposal, and it states:

‘The subject application represents the best use of the developable portion of the land, while preserving significant areas of natural wetlands and open space for public use. To do nothing on the site represents a lost opportunity to provide future housing for the anticipated future population in the area’.

The report fails to acknowledge the alternatives to the proposal as being development of land in accordance with the existing consent.

Housing Diversity

The provision of housing mix and typology is not contemplated in the Socio-Economic Assessment Report. The report states that the development aims to provide low density residential lots. However, the subdivision layout and the submitted report, fails to acknowledge the density targets in Section B24 of the DCP, in particular; the provision of small lot/medium density housing (see extract of B24 Indicative Structure Plan below).



B24 Indicative Structure Plan Area E (purple line represents Lot 3//DP622318 in which there is a picket of small lot/medium density housing anticipated the northern extent of land fronting Mahers Lane).

Access

Engagement with the local community by the applicant pre-lodgement and community submissions received by Council reflect strong concern related to traffic congestion at both the Mahers Lane/Terranora Road and Henry Lawson Drive/Terranora Road intersections. The submitted report notes that the Traffic Impact Assessment prepared and submitted with the DA concludes the "development will not have a significant impact on the road network and that no substantial effects on the adjacent intersections have been identified during the construction phase."

As previously discussed in this report, the provision of access at the above referenced intersection both during construction and once the development is established is constrained by the road network and its lack of capacity to accommodate the anticipated traffic resulting from the proposal.

Whilst it is acknowledged that the future construction of Broadwater Parkway (by others) would alleviate the congestion at the above-mentioned intersection by way of providing a new road connection from Mahers Lane to Fraser Drive, the construction of that road is not planned for by Council (in accordance with Tweed Road Contribution Plan No 4). Rather, the construction of that road has been agreed to by other developers in the Altitude Aspire VPA. In the absence of the relevant sequencing of development taking place to require the construction of a road to alleviate the congestion in the existing road network, the proposal is not viable from a traffic and access perspective and will have an unacceptable impact on the road network.

To this end, it is noted that the submitted Socio-Economic Impact Assessment report recognises the planned link road. However, it states:

This link road would cross land owned separately and works associated with the proposed link road are outside of the control of the Applicant as it relates to land separately owned.

Given the issues raised pre-lodgement in relation to the above link road, and given there is an existing VPA for the construction of that road but without any timing for delivery, it would be in the public interest that the subject land owner, as part of the pre-lodgement consultation, engage with other land owners to enter into negotiations and agreements to bring forward the construction of the link road to facilitate the proposal.

Based on the above considerations, the anticipated impact in the submitted Socio-Economic Assessment Report "checklist" is not well founded, particularly where Social Impact and Community Infrastructure (access) are found to be net neutral based on the balance of uncertain/neutral or negative effects of the proposal. Rather, the proposal is considered to have a negative impact in relation to social impact (housing and public realm) and Community Infrastructure (access).

In conclusion, the proposal fails to demonstrate maximum benefit for the community from the proposed development in terms of housing diversity and access (traffic impacts).

Section A19 Biodiversity and habitat management

The objectives of Section A19 of the DCP are:

- 01. Retain and restore native vegetation and habitats for native species in patches of a size and configuration that will enable existing plant and animal communities to survive in the long term.*
- 02. Provide development controls to prevent the degradation of ecological values.*
- 03. Provide guidance on information required to enable informed decision-making.*
- 04. Ensure that construction and operational impacts of development are avoided and/or mitigated using current best practice standards.*
- 05. Provide guidance on acceptable measures to avoid or minimise the impact of proposed development on biodiversity including for proposals affected by Part 7 of the Biodiversity Conservation Act 2016.*

- O6. Compensate for unavoidable habitat losses in accordance with applicable legislation, or in the absence of such legislation, contemporary best practice.*

Section 2 of the DCP states that the following objectives and development controls apply to all biodiversity themes:

- O1. Specify the biodiversity elements that the development must avoid (red flags).*
- O2. Specify any setbacks, buffers or other measures required to minimise the ongoing impacts of the development on biodiversity values.*
- O3. Specify “avoid or minimise” measures that may be either included in a Biodiversity Development Assessment Report (BDAR) or additional to those matters considered in a BDAR prepared in accordance with the Biodiversity Conservation Act 2016.*
- O4. Specify how red flagged areas and associated ecological setbacks are to be protected and managed.*
- O5. Provide for minor variations to red flagged areas that maintains or improves biodiversity outcomes.*
- O6. Provide additional flexibility where improved biodiversity outcomes are assured.*

The following controls apply to the proposal.

Control C2:

Unless adequate pre-existing biodiversity offset arrangements have been made under a Council-endorsed strategic planning process (e.g. a master plan) or a State or Federal government approval, clearing of bushland or other habitat not red flagged under C1 will generally not be supported unless all of the following apply:

- a) the area to be cleared is less than 5000m² ;*
- b) the clearing does not result in a significant decrease in habitat connectivity;*
- c) there are no other suitable locations on the site;*
- d) an ecological setback of at least 20m is maintained; and*
- e) adequate provision is made to compensate for any clearing in accordance with C28- C30*

Control C3:

In the case of pre-existing offsetting arrangements or other biodiversity management measures secured under a Council-endorsed strategic planning process (e.g. a master plan) or a State or Federal government approval such arrangements shall be:

- a) implemented to the extent to which they are relevant to the development application under consideration; and*
- b) only varied because of specific impacts of the development, changed circumstances, or new information not previously considered.*

Control C4:

In the case of bushland or wetland vegetation on the coastal floodplain (as per Council’s 1 in 100 year flood mapping – See <http://www.tweed.nsw.gov.au/Mapping>) consideration shall be given to increasing the ecological setbacks required under C1 to allow for future landward migration of native vegetation affected by climate change induced increases in tidal inundation and rises in the water table.

Control C5:

For development involving subdivision:

- a) a development envelope(s) is to be formally defined for created lots greater than or equal to one hectare to ensure that future development of the subdivided lot(s) avoid any relevant red flagged areas and associated ecological setbacks*
- b) with the exception of individual very large trees, stags or hollow-bearing trees any proposed lot(s) with an area less than one hectare shall not include red flagged areas.*

The proposal fails to conform to fundamental development envelope controls (“DEC”) where relating to red flagged values including:

- the direct removal of threatened entities;
- significant encroachment into ecological setbacks/buffers from adjacent red flagged values including Coastal Wetland Areas (Important Wetlands), EEC’s and waterways without sufficient justification for the variation to the controls;
- the filling of a first order waterway and alteration to the existing drainage regime; and
- the proposed perimeter road fails to include fauna sensitive design measures such as (but not limited to) sufficient culvert/overpass/ bridge sections across waterways to facilitate fauna movement.

Control C9:

The following areas that are within the same lot (or lots) to which the development application applies are to be protected in perpetuity as protected habitat:

Development Type and Scale		Protection Requirement
LEP Zoning	Number of lots possible ¹	
Subdivision in Residential, Tourist or Industrial Zones (e.g. R1, R2, R3, RU5, SP3, IN1, IN4 or equivalent)	>= 25	a) all relevant red flagged areas across the entire site and b) associated ecological setbacks within 100m of the development envelope(s) and c) ecological setbacks to important wetlands, estuarine areas, third order streams or greater across the entire site.
	6-24	a) all relevant red flagged areas ² within 100m of the development envelope(s) and b) associated ecological setbacks within 100m of the development envelope(s) and c) important wetlands, estuarine areas, third order streams or greater and associated ecological setbacks across the entire site.
	<= 5	a) all relevant red flagged areas ² within 100m of the development envelope(s) and b) associated ecological setbacks within 100m of any proposed development envelope(s).
Subdivision in Rural Residential Zones ² (e.g. R5, or equivalent) for proposed lots >= 2ha		a) all relevant red flagged areas ² on the proposed lots and b) associated ecological setbacks within 100m of any proposed development envelope(s) and c) ecological setbacks to third order streams or greater.
Subdivision in Rural Residential Zones (e.g. R5 or equivalent) for proposed lots ³ 1 - 2ha		All relevant red flagged areas ² on the proposed lots
Subdivision in Rural or Environmental Zones (e.g. RU1, RU2, E2, E3 or equivalent)		Only if considered necessary to protect red flagged areas ²
Subdivision in Business or other Zones (e.g. B1-B7, SP1, SP2, RE2 or equivalent)		To be determined on a case by case basis generally consistent with residential or industrial development of a similar impact and scale
Larger scale developments not involving subdivision ⁴		a) all relevant red flagged areas ² across the entire site within 200m of the development envelope(s) and b) associated ecological setbacks within 200m of the development envelope(s).
Other Development		To be determined on a case by case basis consistent with C11. Only if considered necessary to protect red flagged areas (and contiguous bushland).

¹ Calculated as the total area of the lot (or lots in the same ownership) / minimum lot size possible.

² A dwelling entitlement is required to ensure long term protection and management by the owner.

³ Under C5 lots under 1.0 ha are not to contain red flagged areas.

⁴ To be determined during assessment on a case by case basis but does not include dwellings and associated uses.

⁵ including any contiguous bushland.

Control C10:

The following areas that are within the same lot (or lots) to which the development application applies are to be managed under an approved Habitat Management Plan (see C12) for the duration specified.

Development Type and Scale		Management Requirement	
LEP Zoning	Number of lots possible ¹	Applies to:	Minimum duration:
Subdivision in Residential, Tourist or Industrial Zones (e.g. R1, R2, R3, RU5, SP3, IN1, IN4 or equivalent)	>= 25	Any areas protected under C9	In perpetuity
	6-24		Establishment period plus 10 years maintenance
	<= 5		Establishment period plus 5 years maintenance
Subdivision in Rural Residential Zones ² (e.g. R5, or equivalent) for proposed lots >= 2 ha		Any areas protected under C9	In perpetuity
Subdivision in Rural Residential Zones (e.g. R5 or equivalent) for proposed lots ³ 1 – 2 ha			To be determined on a case by case basis. Only required if considered necessary to manage sensitive and/or significant areas likely to be affected by development
Subdivision in Rural or Environmental Zones (e.g. RU1, RU2, E2, E3 or equivalent)		Any areas protected under C9	To be determined on a case by case basis. Only required if considered necessary to manage sensitive and/or significant areas likely to be affected by development
Subdivision in Business or other Zones (e.g. B1-B7, SP1, SP2, RE2 or equivalent)		To be determined on a case by case basis generally consistent with residential or industrial development of a similar impact and scale	
Larger scale developments not involving subdivision ⁴		Any areas protected under C9	In perpetuity
Other Development		To be determined on a case by case basis consistent with C11. Only required if considered necessary to manage sensitive and/or significant areas likely to be affected by development	

¹ Calculated as the total area of the lot (or lots in the same ownership) / minimum lot size possible

² A dwelling entitlement is required to ensure long term protection and management by the owner.

³ Under C5 lots under 1.0 ha are not to contain *red flagged* areas.

⁴ To be determined during assessment on a case by case basis but does not include dwellings and associated uses.

Long term management arrangements under development envelope control C10 requires all protected areas under DEC C9 to be managed in-perpetuity. The applicant has provided a Letter of Offer to dedicate land for environmental purposes. However, has failed to detail in-perpetuity management and funding arrangements for the proposed reserve land. The one-year establishment phase and four-year maintenance phase as detailed in the site Rehabilitation Plan dated December 2024 prepared by JWA Ecological Consultants does not reflect or provide for long term in-perpetuity management and is therefore unacceptable.

Additional Controls – Koala Planning

Control C17:

In relation to koalas and their habitat, the development control provisions (Part 5) of the Tweed Coast Comprehensive Koala Plan of Management apply to development on the Tweed Coast (see <http://www.tweed.nsw.gov.au/PlanningPolicies>).

Control C18:

For development outside of the Tweed Coast:

- a) the provisions of State Environmental Planning Policy No. 44 - Koala Habitat Protection continue to apply, including the preparation and approval by the Department of Planning and Environment of an individual koala plan of management for land that contains core koala habitat and has an area, together with any adjoining land in the same ownership, greater than one hectare;*
- b) other provisions of this Section of the DCP, including those relating to habitat retention (e.g. C1), formal protection (e.g. C9) and management (e.g. C10, C12) apply to koalas and their habitat*

As previously mentioned in this report, the proposal fails to satisfy any of the higher order considerations for Koala management (pursuant to SEPP (Biodiversity and Conservation) 2021). Based on the lack of information in relation to Koala management, it is not possible to adequately assess the proposal under the above controls.

Additional Controls – Waterways and Riparian Areas

Control C19:

In relation to development adjoining waterways and riparian areas Council may, where considered appropriate require bank stabilisation works, adequate arrangements for public access, measures to minimise pollution and sedimentation and/or measures to reduce the impacts of biting insects.

The above requirements could be dealt with under an appropriate management plan and recommended conditions of consent if the application was being determined favourably.

Control C20:

Development setbacks required to manage potential bushfire risk shall not overlap with red flagged areas referred to in C1 or other retained bushland.

Control 21:

A development setback required to manage potential bushfire risk may overlap with an ecological setback to be managed as an ecological buffer in a Habitat Management Plan where: a) no more than the outer half of the ecological buffer is used for that purpose; and b) the overlap is managed to maximise ecological values within the scope of the bushfire management requirements (i.e. maintaining a minimum of 30% native tree canopy cover and a fuel reduced understorey)

As previously mentioned elsewhere in this report, the proposed no fuel zone adjacent to Road 5 in Stage 4 is within a proposed Environmental Management Area which potentially contains red flagged areas. The proposal fails to comply with this control.

Serious and Irreversible Impacts (SAIL) under the Biodiversity Conservation Act 2016

Control 24:

If the development application is required to be accompanied by a Biodiversity Development Assessment Report (BDAR) under the Biodiversity Conservation Act 2016, the proponent, when conducting the impact assessment of potential SAI entities for serious and irreversible impacts on biodiversity values (as specified in the Biodiversity Assessment Method; BAM), shall also include an assessment of any threatened species or communities listed at http://www.tweed.nsw.gov.au/PlanningPolicies/TSC_SAI.pdf that would be impacted by the proposed development.

Measures to Avoid or Minimise Impacts under the Biodiversity Conservation Act 2016

Control 25:

For the purposes a development application affected by s7.13 of the Biodiversity Conservation Act 2016:

- a) the measures that the consent authority requires to avoid or minimise the impacts of a proposed development on biodiversity values (see s7.13(6) of the BC Act) include (but are not limited to) all controls (except C28-C30 which relate to offsets and habitat compensation) relevant to the development application contained in this Section of the DCP; and*
- b) any avoid or minimise measures proposed in a Biodiversity Development Assessment Report (BDAR) that accompanies such an application shall be considered in the context of all matters relevant to the determination of the development application.*

The proposed development is affected by the provisions of this DCP given the site occurs within the Tweed Coast Koala Management Area (Tweed Heads KMA) identified in the approved Tweed Coast Comprehensive Koala Plan of Management 2021 (KPoM).

The site also contains candidate Endangered Ecological Community (EEC) within the study area including:

- Coastal saltmarsh in the NSW North Coast, Sydney Basin and South East Corner bioregions – PCT 4103 Sporobolus virginicus Saltmarsh;
- Freshwater wetland on coastal floodplains of the NSW North Coast, Sydney Basin and South East Corner bioregions – PCT 3963 Estuarine Reedland;
- Swamp sclerophyll forest on coastal floodplains of the NSW North Coast, Sydney Basin and South East Corner bioregions PCT 4004; and
- Swamp Oak Floodplain Forest of the New South Wales North Coast, Sydney Basin and South East Corner Bioregions - PCT 4030 Far North Estuarine Swamp Oak Forest.

The site also contains:

- Potential Groundwater Dependent Ecosystems – PCT 3963, PCT 4004 and PCT 4030;
- Coastal Wetland Area associated with Trutes Bay and Duroby Creek;
- High conservation value area as identified on the NSW Biodiversity Values Map – assigned to the Coastal Wetland Area;
- Mapped preferred Koala habitat in the Tweed Coast Comprehensive Koala Plan of Management 2020 yet largely restricted to the Trutes Bay and Duroby Creek riparian area;
- The site is identified as a subregional wildlife corridor linkage node from Terranora Broadwater to Terranora Ridge and Tweed-Cobaki Climate Change Corridor;
- Type 1 and Type 2 Fish Habitat [Policy and guidelines for fish habitat conservation and management – Update 2013 (DPI)];
- Type 1 Highly sensitive key fish habitat - Coastal saltmarsh >5m² in area SEPP 14 coastal wetlands and
- Type 2 Moderately sensitive key fish habitat – Mangroves - Far North Mangrove Forest PCT 4140.

A search of NSW Bionet database threatened species (listed under the BC Act) records with an accuracy of 1000 m or better in a 5 km buffer from the site (North: -28.18 West: 153.45 East: 153.55 South: -28.28) since 06 December 1980 until 06 December 2024 returned the following:

- o A total of 5728 records of 59 fauna species
- o A total of 2034 records of 31 flora species
- o 6 species previously recorded onsite including:
 - o White-bellied Sea-Eagle (*Haliaeetus leucogaster*)
 - o Eastern Osprey (*Pandion cristatus*)
 - o Koala (*Phascolarctos cinereus*)
 - o Black-necked Stork (*Ephippiorhynchus asiaticus*)
 - o Yellow Satinheart (*Bosistoa transversa*)
 - o Fine-leaved Tuckerroo (*Lepiderema pulchella*).

The following threatened flora (2) and fauna (7) species listed within schedules under the Biodiversity Conservation Act 2016 were reported on site in the submitted BDAR 2024 being:

- o Fine-leaved Tuckerroo (*Lepiderema pulchella*)
- o Scrub Turpentine (*Rhodamnia rubescens*)
- o White-eared monarch (*Carterornis leucotis*)
- o Eastern coastal free-tailed bat (*Micronomus norfolkensis*)
- o Little bent-winged bat (*Miniopterus australis*)
- o Southern myotis (*Myotis macropus*)
- o Rose-crowned fruit-dove (*Ptilinopus regina*)
- o Yellow-bellied sheath-tail-bat (*Saccolaimus flaviventris*)
- o Greater broad-nosed bat (*Scoteanax rueppellii*).

Those flora and fauna species underlined above are identified as Serious and Irreversible Impact species.

Red flagged values under Section A19 of the DCP located within the study area include:

- Listed ecological communities;
- Over-cleared vegetation types;
- Over-cleared landscapes – Byron-Tweed Alluvial Plains;
- Important wetlands;
- Other bushland on a slope greater than 18 degrees;
- Land within a defined wildlife corridor;
- Areas within a species polygon for threatened fauna known or predicted to occur at the site;
- Areas within a species polygon for threatened flora or other significant flora that are known to occur at the site; and
- First order and fourth order streams.

The site is affected by Section A19 given it includes a mapped wetland. The proposal includes clearing in excess of 2500sqm of native vegetation based on proposed minimum lot sizes of 450sqm and therefore the Biodiversity Offset Scheme ("BOS") (pursuant to Biodiversity Conservation Act 2016) is exceeded. A Biodiversity Development Assessment Report ("BDAR") accompanies the application.

Having regard for the Biodiversity Assessment Method 2020 ("BAM") and provisions of the Biodiversity Conservation Act 2016 (BC Act) and Biodiversity Conservation Regulation 2017, the submitted BDAR is considered deficient following critical review in the following areas:

- The BDAR has not been sent to Council as a Case Party in the Biodiversity Offsets and Agreement Management System to enable Council as the assessing authority to interrogate the data in the BAM-Calculator.

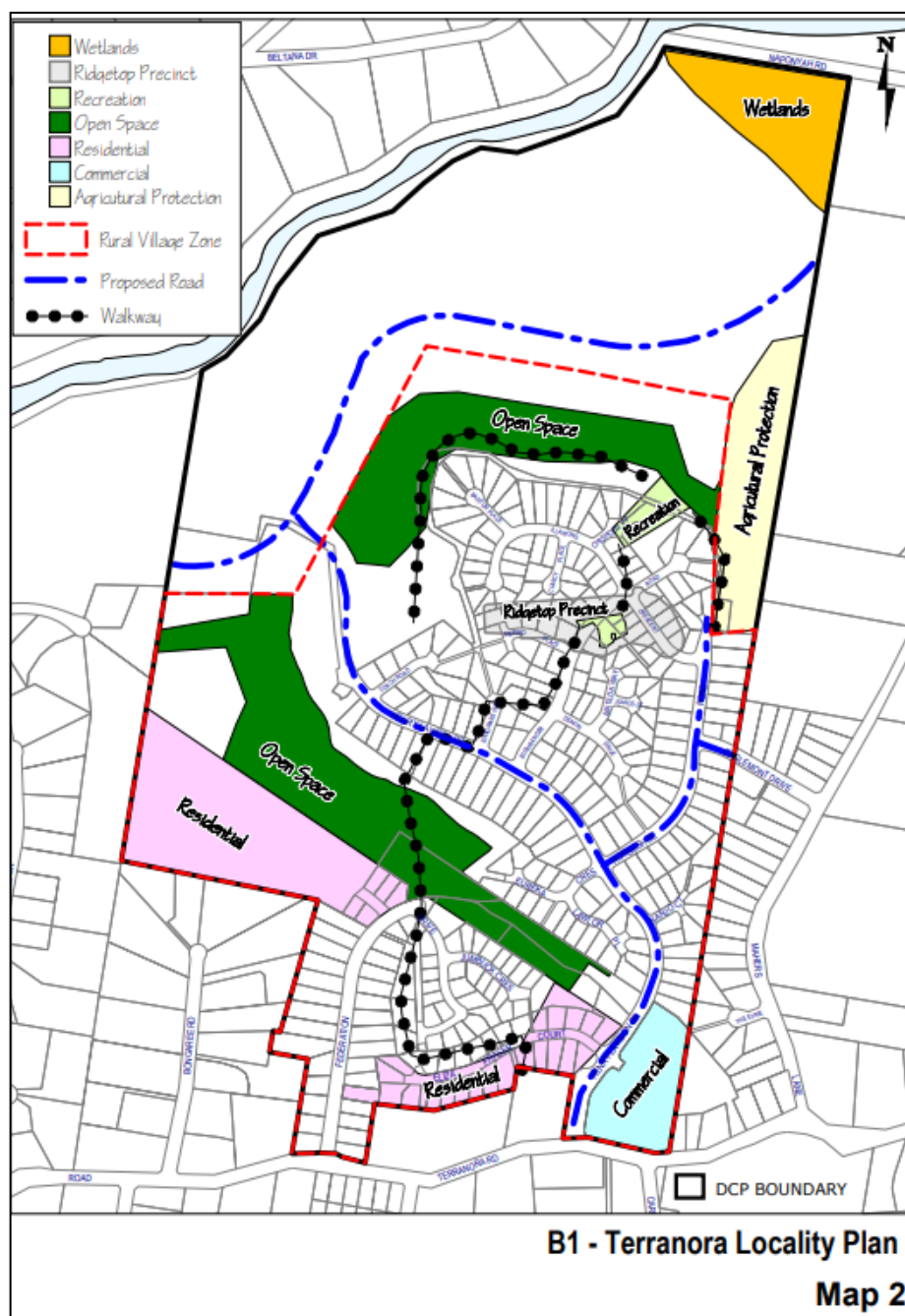
- Minimum information as listed in Appendix K of the BAM such as digital mapping shapefiles have not been made available to Council.
- Vegetation mapping has been provided at a scale that is difficult to analyse (Figure 5). The BAM at Part 4.1 recommends the following: a capture scale consistent with the site Map and the Location Map (recommended scale of 1:1000 or finer). Where the map scale exceeds 1:10,000, the Site Map should be split into separate maps that capture the entire area.
- Vegetation mapping has been completed at a broad scale of 1:6000 (Figure 5). Based on site inspection and aerial imagery interpretation, the vegetation mapping should be refined to capture and discern units of native vegetation either not currently mapped or incorrectly categorised. Given the type of vegetation occurring onsite (being sensitive to subtle changes in grade and salt/freshwater influence) it is important that the vegetation mapping achieves a high degree of accuracy to inform impact assessment.
- Anomalies exist in the assignment of PCT's and omission of vegetation units in the mapping which may result in altered vegetation integrity scores, candidate species lists and ultimately final biodiversity credit calculations. Species polygons such as that for Southern Myotis appear to be incorrectly mapped based on habitat values.
- Riparian buffer distances to Important Wetlands in accordance with Table 14 Appendix E of the BAM have not been shown in the BDAR mapping.
- The assessment of SAI entities such as *Rhodamnia rubescens* assumes that the specimen may be retained and afforded adequate protection. The engineering plans show the land occupied by the *R. rubescens* specimen is to be filled.
- The impacts of artificial light spill and impact on threatened entities have not been sufficiently considered.
- The BDAR has not comprehensively considered prescribed impacts such as non-native vegetation (Camphor Laurel) affording habitat to threatened species known to occur onsite such as Rose-crowned Fruit-dove.
- No alternative layouts have been shown in the BDAR to demonstrate how impacts are to be avoided under the current proposed layout. Limited information has been provided to explain or justify how or why such changes were made and on what basis as part of a constraints analysis.

Having regard to the above merit consideration against relevant controls, the impacts of the proposal are unacceptable. As such, further merit consideration under Part C (Managing ongoing impacts) of Section A19 is not warranted.

The proposal is fundamentally inconsistent with the objectives of Section 2 Development Envelope Controls and the overall objectives of Section A19 of the DCP. For these reasons, the proposal is incapable of support and is recommended for refusal.

Section B1 Terranora

As previously mentioned in this report, Lot 13 DP 1264394 is mapped as partly affected by Section B1 of the DCP. An extract of the map is provided below:



The proposed layout of the subdivision is inconsistent with the above Locality Plan, particularly in relation to provision of Open Space in which a green belt of open space was anticipated to the northern aspect of existing residential development along Illawong Crescent and other suburban streets.

The design principles and objectives of this Section B1 of the DCP (which informed the above locality plan layout) are:

- To ensure that development is consistent with the scenic and environmental values of the area.
- To provide generally for a low density residential environment while at the same time providing for flexibility in housing choice and density by allowing for the erection of a variety of residential forms in appropriate areas.

- *To enable development for retail, commercial and community purposes for the local and nearby rural community in appropriate locations within the site where the scale and type of development is compatible with living areas.*
- *To ensure that development does not take place unless adequate provision is made for utility services such as electricity, drainage, water, sewerage and telephone.*
- *To provide roads and pathways for effective, convenient and safe access and efficient servicing by public transport.*
- *To ensure subdivision design has regard to climate, solar access, slope, drainage patterns, erosion, geological hazards and landscape features.*

Since the inception of this Section B1 of the DCP, Council has implemented the Tweed Scenic Landscape Protection Policy. This policy aims to recognise, enhance and protect the unique scenic landscape qualities of the Tweed region, ensuring they are considered in land use planning and development decisions. Under this policy, and as discussed later in this report, the site is mapped as highly visible, with a total of 15 priority viewsheds identified for the Mahers Lane site. The provision of a green belt at the location in the Locality Plan, aimed to achieve the outcomes and principles in the DCP as far as ensuring the scenic and environmental values of the area are protected.

As previously mentioned in this report, the application has failed to justify the ecological merits of departing from the DCP through a comparative analysis study of open space alternatives having regard for the ecological values of the area currently identified as Open Space in the Section B1 of the DCP to the south of the site. To this end, it would be expected that any alternative open space area (conservation) should be commensurate in terms of areal extent and values to be protected. Furthermore, any departure from the DCP would need to be supported by a high-quality visual impact assessment to determine the impact of the urban footprint having regard to the level of visibility the site features as well as impacts on existing viewing situations for residences to the south and the 15 priority viewsheds highlighted in the Tweed Scenic Landscape Protection Policy. The proposal fails to include the required level of information to undertake an assessment in this regard.

Furthermore, there is no capacity for sewer, water or road infrastructure to support the proposed density of development in the subdivision. As discussed previously in this report, the site benefits from a consent which 12 residential lots were to be created on the site, and the Open Space per the structure plan delivered and dedicated to Council.

The proposal fails to include a pedestrian/cycle connectivity plan that demonstrates adequate pedestrian connections to key infrastructure which surrounds the site. The same applies for the provision of public transport and bus networks.

Finally, the information supplied in the DA fails to demonstrate the site is capable of supporting the extent of development proposed noting the various issues with bushfire APZ's, buffer distances from the wetland, geotechnical issues and groundwater/stormwater catchment issues raised in this report. As such, the proposal fails to demonstrate that the subdivision design has regard to climate, slope, drainage patterns, erosion, geological hazards and landscape features.

Based on the above considerations, the proposal fails to comply with Locality Plan as well as the following development controls and objectives:

- B1.3.2. Subdivision and dwellings in the Residential Area - Subdivision to provide usable and suitably located open space, the prominent ridgeline containing larger lot sizes;
- B1.4.1 Public Open Space Objective – to retain views from Terranora Road without the interference of housing;
- B1.5.1 Environmental Protection Objectives – retain vegetated areas in their natural state to enhance the visual appearance of the development and ensure that development takes account of the existing physical constraints of the land;

- B1.5.3 Tree preservation and landscaping controls - All applications for development should indicate the location of existing native vegetation and should note the measures to be taken to protect existing native vegetation which is to be retained;
- B1.6.1 Traffic and Transport Objectives - Create opportunities for traffic circulation and movement through the development that are both safe and convenient for all vehicles, allow for convenient and safe access to public transport from all development areas and activity centres including the Terranora Primary School and create opportunities for pedestrian pathways which minimise both walking distances to activity destinations and conflicts with traffic routes; and
- B1.8.1 Utility objectives - To provide for appropriate and efficient utility systems, the costs of which are to be equitably shared between all developers, Council and other Government Agencies and through the implementation of reasonable contributions facilitate the economic construction of utility services.

Based on the above discussion and highlighted areas of noncompliance, the proposed development fails to satisfy the overarching design principles and objectives of this site specific DCP (Section B1).

Section B24 Area E Urban Release Development Code

The aims of this Section B24 are to ensure:

1. *Quality residential development that responds to aspect, slope and climate;*
2. *Protection and enhancement of natural bushland areas, waterways and land of high ecological value;*
3. *Provision of quality open space and public domain areas that meet the needs of the local and regional community*
4. *Provision of integrated into pedestrian and cycleway networks;*
5. *Co-ordinated infrastructure provision to ensure efficient use of the land and efficient infrastructure supply and provision.*

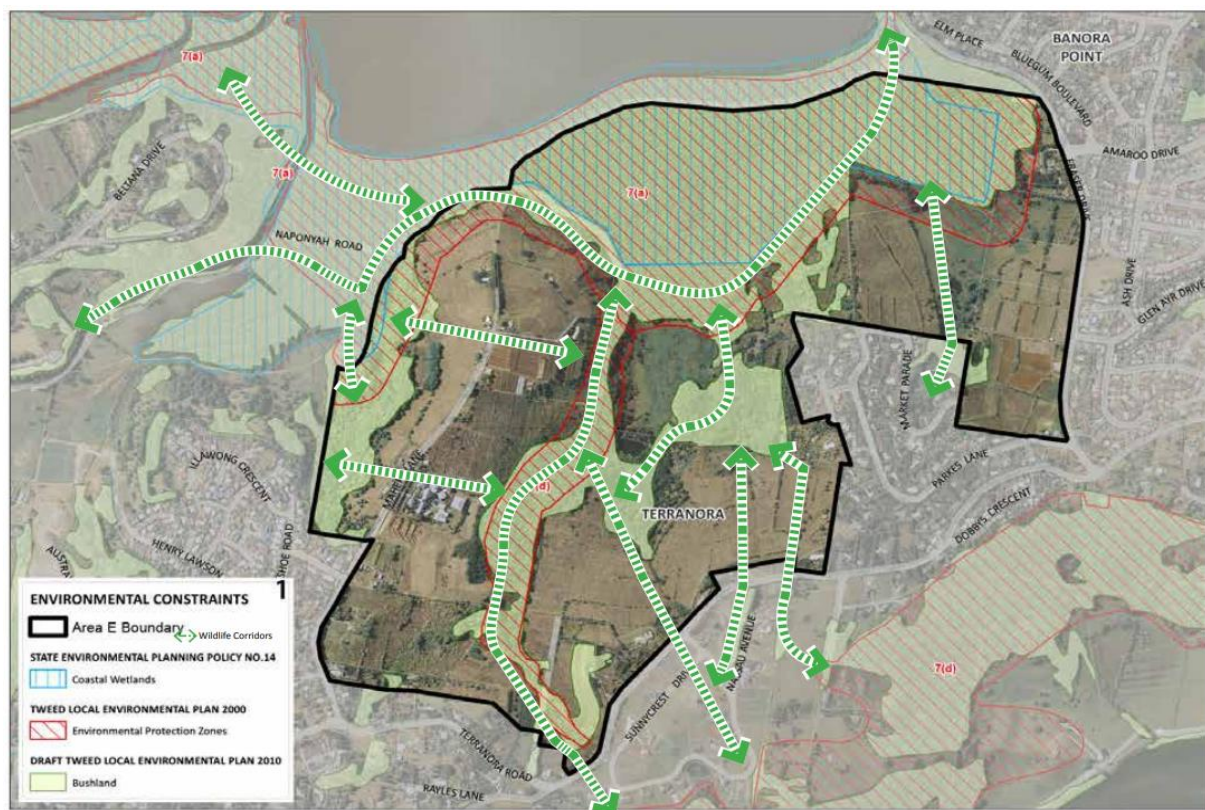
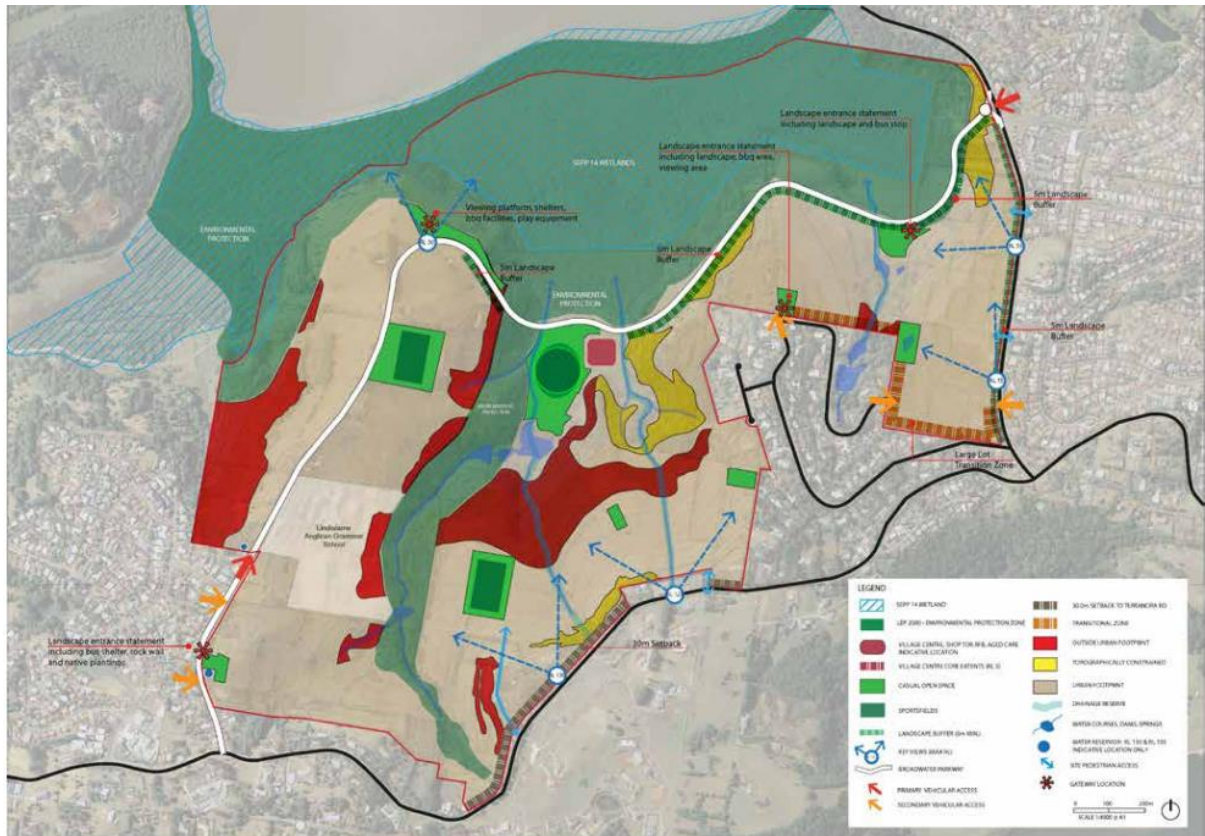
Pursuant to Part 2 – Subdivision of Section B21, Lot 3 DP 822318 is located in the Mahers Lane Precinct.

Part 2- Subdivision

Section 2.2 Urban Footprint and Design Principles

In order to realise the Vision for Area E, Section B24 contains a detailed Urban Footprint, followed by a series of Design Principles applicable to the various stages of development that Area E will contain. These Design Principles are integrated and should be read in conjunction with each other to ensure holistic high-quality outcomes for the site.

In establishing an urban footprint for development, the land identified for environmental protection is removed, in keeping with the Vision of this Code. After removing environmental protection areas from the urban footprint, the next highest order constraint is land that is identified as possessing a combination of greater than 18 degrees slope and identified as 'Bushland'. These tracts of land also comprise a significant portion of the site's landscape and visual character, and accordingly their retention or enhancement is of importance given its visual quality, contribution to urban relief and ability to integrate with wildlife corridors.



The proposed development envelope appears to extend outside the urban footprint identified in Figure 2.1 of Section B1 of the DCP and appears to extend into areas of 'Bushland' shown in Figure 2.3.

DA25/0011 – NRPP Assessment Report- 217 lot residential subdivision, with conservation lot and associated civil works and vegetation removal, environmental facility, recreation areas and environmental protection works (Integrated Development)– 7 August 2025

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As outlined in Control 3, Section 2.2 of Section B24, this DCP does not support urban development outside the urban footprint unless for critical/essential infrastructure.

Section 2.3 – Design principle 1: Environment

The vision under this design principle is to facilitate the preservation and enhancement / rehabilitation of environmental zones providing management for the conservation of threatened and endangered species. This includes the maintenance of open drainage networks as land of environmental quality where possible, preservation of native bush land vegetation and recognition of areas high environmental amenity value. Ensure that proposed uses adjacent to environmental protection zones do not have significant adverse impacts.

The development controls under this Section are detailed below:

- 1. Demonstrate that the environmental protection areas are retained and protected, that existing wildlife corridors and vegetative links have been maintained, and links identified within Figure 2.3 established. These links could be continuous tracts of vegetation, or where they traverse urban areas, a strong linking canopy of native street trees;*
- 2. Demonstrate suitable buffering and ongoing management of land possessing high environmental quality;*
- 3. Demonstrate that an adequate buffer of at least 20m (which may include the road reserve) is retained around the edge of the environmental protection area;*
- 4. Demonstrate the works identified within the Council approved Wetland Restoration Plan and Habitat Restoration Plan that the development will be responsible for and the intended method of addressing the works required;*
- 5. Demonstrate that any wetland on the land will be restored and managed to the consent authority's satisfaction to restore freshwater wetland values and minimise breeding habitat for saltwater mosquitoes and biting midges.*

The proposal fails to comply with the above development controls for the following reasons.

- The proposed buffer distances fail to achieve the minimum distance from the environmental protection area.
- The consent authority cannot be satisfied the wetland will be restored and managed given the lack of information in relation to environmental management processes pre-, during and post construction not limited to but including bushfire management, ASS management, hydrogeological processes, extent of cut and fill and stormwater quantity and quality management at the existing points of discharge (to the wetland environment).
- The application fails to address the impact of the development on Koala habitat having regard to relevant Plans of Management that apply to the site.

Based on the above consideration, the proposal fails to satisfy the objectives and development controls of Section 2.3 - Design Principle 1: Environment.

Section 2.4 - Design Principle 2: Landscape Character and Views

The vision under this design principle is that the landscape and visual character of the site should be recognised and enhanced. Existing significant landscape features including topography, overland flow paths, dams, native vegetation and other significant stands of vegetation will be retained. Realise and retain key visual character components of the site through a contemporary urban structure and built form.

The development controls under this Section are listed below:

1. *Any proposal must detail consistency with the visual strategies detailed above in the format of a visual impact assessment as part of any subdivision development application. The visual analysis should address:*
 - *key vantage points both into and out of the Area E site as identified within this plan;*
 - *provide visualisations of subdivision pattern and indicative built form by way of 3D photo montage from key surrounding vantage points around the site (refer to Fig 2.5), as well as from key cross site vantage points. All visualisations are to be provided at an appropriate scale for meaningful assessment. Montages should illustrate a representation of indicative built form including particularly roof materials and colour.*
2. *Any proposal must not obstruct the key view lines as identified in the identified 5 key views illustrated at Figure 2.5 and demonstrate the subdivision design enables future development of lots that can preserve the key view lines.*
3. *Any proposal must demonstrate that the undulating and vegetated valley character is maintained as an important part of the sites visual character in terms of regional inward views*
4. *Achieve the outcomes of the Tweed Scenic Landscape Strategy.*
5. *Any proposal must identify remnant vegetation across the site including existing paddock windbreaks and seek to retain or interpret these important elements of the sites visual character. Suggested means of embodying these components include adapting existing vegetated wind break lines as street trees, to create more visually attractive streetscapes; maintain the presence of existing mature trees to assist in visually defining the identified character zones and preserving ecological habitat.*
6. *Any proposal must demonstrate a building design and structural system which reduces the need for benching and significant cut and fill thereby maintaining the topographic integrity and visual character of the site.*
7. *Identification and retention of significant vegetation (including non-native species) that contribute significantly to the landscape character of the locality.*
8. *Significant landscape features including overland flow paths, dams, native vegetation and other significant stands of vegetation are to be identified and retained in any development application.*

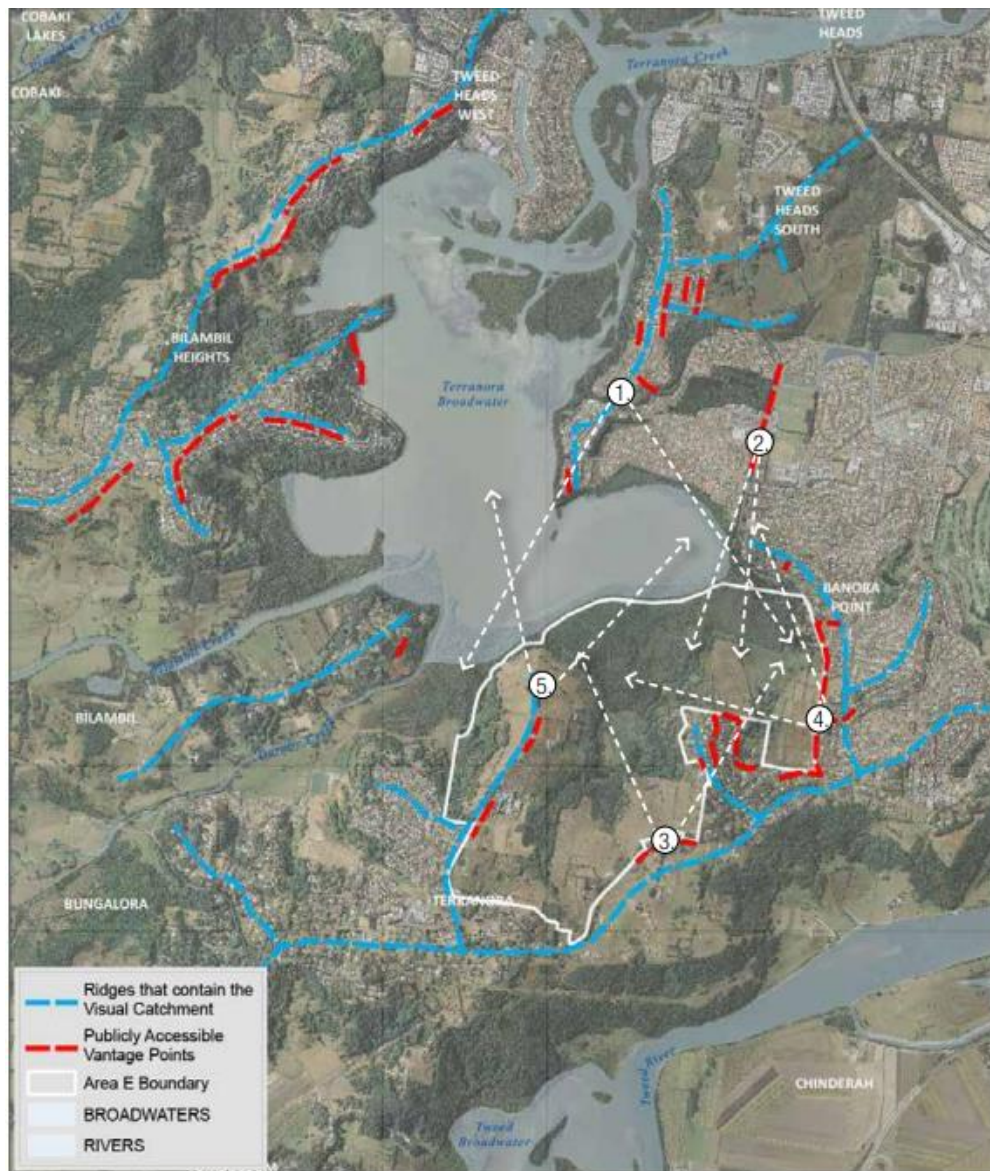


Figure 2.5 - Visual Catchment of Area E and Key Public Vantage Points

The application is accompanied by a Visual Impact Assessment which acknowledges the viewsheds outlined in the Tweed Scenic Landscape Protection Policy. However, the Visual Impact Assessment fails to provide the level of information required under the development controls and therefore it is unclear as to whether the proposed development is acceptable in terms of visual impact. The following assessment comments are provided in this regard:

- The submitted Visual Impact Assessment fails to provide the required visualisation of subdivision pattern and indicative built form by way of 3D photo montage from key surrounding vantage points around the site as well as from key cross site vantages.
- It is unclear as to whether the proposal obstructs view lines as identified in the 5 key views illustrated at Figure 2.5. This is particularly relevant for the ridgeline at which an open space greenbelt was provided in the B1 Locality Plan and is proposed to be replaced with a residential urban footprint.
- The proposed encroachment into the urban footprint in the location of bushland fails to retain vegetated valley character as an important part of the site's visual character in terms of regional inward views.
- The proposal fails to appropriately identify and seek to retain significant vegetation (including non-native species) and that contribute to the landscape character of the locality, this is

particularly the case when considering Ecologically Endangered Community (EEC) which is proposed to be removed and the impact of vegetation removal for bushfire protection in proposed Environmental Open Space areas.

Based on the above consideration, the proposal fails to satisfy Section 2.4 – Design Principle 2: Landscape Character and Views.

Section 2.5 - Design Principle 3: Landforming

The vision under this design principle is to maintain the integrity, intrinsic landscape and visual character of the undulating landscape by reducing bulk earth works and site benching over Area E. Future development over the site should pursue the underlying approach that development should be built to sloping site conditions rather than reconfiguring the sloping site to accommodate a building.

The development controls that apply to this design principle are:

- 1. Maintain the integrity of ridge lines, valleys and natural topographic features as an important part of the locality's character;*
- 2. Batters and retaining walls are not permitted for the purpose of creating terraced lots, as per DCP A5; and*
- 3. Demonstrate the preservation and future productive use of Class 6 soil.*

Having regard to the issues raised under Section A5 of the DCP (in terms of land forming), the proposal fails to satisfy Section 2.5 – Design Principle 3: Landforming.

Section 2.6 - Design Principle 4: Road Layout, Traffic and Transport Vision

The vision under this design principle is that the Broadwater Parkway is to be reinforced as the key neighbourhood connector road. Roads are to generally follow the contours of the site and a north-south; east west orientation to maximise opportunity for best solar orientation. This orthogonal street pattern enhances through connections, legibility and regular shaped lots rather than curvilinear streets and cul-de-sacs. Streets which run north-south are to take advantage of long views towards the Terranorra Broadwater, whilst the remaining streets are encouraged to terminate with a green or landmark vista.

The controls under this design principle are as follows:

- 1. Any application seeking development consent prior to the construction of Broadwater Parkway, must be accompanied by a traffic study demonstrating the ability for the proposal to be accommodated by existing or alternative proposed road networks to the satisfaction of Council.*
- 2. A Traffic Study is to be submitted with any development application should the application depart from the external connections or increase the dwelling targets specified within this Code.*
- 3. Applicants must investigate any changes to public transport services in consultation with the local public transport provider and ensure those changes are incorporated. As part of a development application, a route suitable for a bus shall be designed for in terms of suitable pavement widths and appropriate bus stop locations.*
- 4. Demonstrate how the road layout compliments the topography of the land through a road layout detailing the primary, or long street of the block following the contour, whilst the secondary, or short street of the block positioned perpendicular to the contour.*
- 5. Demonstrate how the road layout is clear and legible, provides long views towards the Terranorra Broadwater, and other green or landmark vistas, and provides for regular shaped lots.*

6. *Ensure that a road forms the edge to the natural and environmental protection areas providing a public interface to the buffers and areas of environmental protection and avoid the rear of properties to directly back onto buffer areas and areas of environmental protection.*
7. *The design of Broadwater Parkway is to include a range of public domain treatments and address pedestrian movement and comfort, efficient vehicle movement, and establish a key entry statement and journey to the overall character and appearance Area E.*
8. *Suitable locations and attractive bus shelter designs should be determined to further encourage this sustainable mode of transport.*

The proposal fails to satisfy the above-mentioned design principles having regard to the following key assessment comments:

- As previously discussed in this report, the proposed development seeks to enable residential subdivision prior to construction of the Broadwater Parkway.
- The submitted TIA fails to adequately demonstrate that the intersection of Mahers Lane with Terranora Road will operate within its capacity upon completion due to the lack of analysis during the significant 'peak hour' being 3pm-4pm. As discussed elsewhere in this report, this peak time coincides with the pick-up time for the nearby Lindisfarne School resulting in extensive queue times at Terranora Road/Mahers Lane intersection.
- The submitted TIA SIDRAA results demonstrate that the AM peak has a Degree of Saturation ("DOS") that exceeds the 0.8 recommended design capacity (including the Mahers Lane connection) and is an underestimate (given the Mahers Lane connection cannot be supported). This highlights that Stage 1 and Stage 2 traffic relying on Henry Lawson Dr/Terranora Road Intersection for access will exceed the intersection design capacity which is an unacceptable development outcome on the road network.
- The submitted TIA fails to demonstrate appropriate provision for bus transport.
- It is noted that once the planned Broadwater Parkway linking Mahers Lane to Fraser Drive is instated (by other developers as part of the Voluntary Planning Agreement for Altitude Aspire), the traffic flow is expected to change considerably and result in improved conditions at both the referenced intersections which may then have capacity to accommodate proposed developments such as this.

Based on the above consideration, the proposal fails to satisfy Section 2.6 – Design Principle 4: Road Layout, Traffic and Transport Vision.

Section 2.7 - Design Principle 5: Open Space

The vision of this design principle is the integration of a variety of open space opportunities including a mix of structured and more informal opportunities. The open space network should be created to link key destinations such as the village centre, residential precincts, structured open space, vantage points and community facilities. These could be positioned within existing drainage lines, environmental areas, bush land corridors and environmental protection areas creating ecological links integrated through the settlement. Alternate forms of recreation should be considered including a cycling criterion track and mountain biking trails more suited to the sloping site conditions. The integration of environmental interpretative walks within and adjoining environmental zones should also be considered.

The development controls under this design principle are as follows:

1. *Structured open space is to be provided as detailed within Figure 2.10, specifically:*
 - *4.17ha (gross) of structured open space within the Village Centre by way of one playing field.*
 - *2.89ha (gross) by way of a singular full sized playing field in the central precinct (southern/southwestern area)*

- 2.09ha (gross) by way of a singular full sized playing field in the western precinct.
- 2. Large open space areas and smaller pocket parks as nominated on the structure plan should be a combination of active and embellished structured and casual open space including community gardens to assist in wider use by the future community. Detail design of each of these parks and open space areas including details of embellishments including lighting, paths ways, viewing platforms, park furniture, landscaping, play equipment, shelters, bbqs and picnic areas are to be lodged with applications that include open space land;
- 3. Subdivision design shall integrate walking and cycling paths connecting to the key open space area, residential precincts with the village centre and surrounding urban fabric. There is opportunity to include pathways through the environmental protection area to traverse the steep topography as well as provide educative interpretive environmental trails;
- 4. Open space areas are to be surrounded by a public interface (predominately roadways) and an adjacent ring of medium density development where row houses, terrace houses, courtyard houses, zero side setback houses, duplex, triplex and other medium density typologies are incorporated;
- 5. Open space and public domain plans prepared are to allocate areas for the purpose of urban agriculture and community gardens, enabling them to be pursued by interested community members;
- 6. In the event of a development application detailing that a structured open space requirement cannot be accommodated within the Area E release site, the applicant shall demonstrate:
 - Investigations undertaken into providing open space as detailed within this Code;
 - How the alternate proposal will properly service the needs of the release area

The proposed development fails to comply with the above development controls having regard to the following key assessment comments:

- The application lacks information to demonstrate the proposal has considered integrated walking and cycling tracks to connect the proposed urban form with existing residential area and key public and private infrastructure in line with Control 3 above.
- The provision of open space in Stage 4 of the development does not have a strong interface with the public domain and urban form (as required by Control 4).
- There is a lack of information regarding the delivery and embellishment of the Environmental Open Space in Stage 4 (per Control 2).
- The provision of maintenance of open space for the purpose of a no fuel zone is not supported.

Based on the above consideration, the proposal fails to satisfy Section 2.7 – Design Principle 5: Open Space.

Section 2.8 - Design Principle 6: Dwelling and Allotment Mix

The vision under this design principle is that subdivision design is to include a range of lot sizes accommodating a range of building typologies. Emphasis is to be on working with the landform, thereby accommodating appropriate building types on appropriate parts of the site to reduce bulk earth works. Accommodation types should include a mix of allotment sizes, integrated and multi-unit development opportunities, topographically sensitive development, housing for aged care and shop top housing within the village centre.

The controls under this design principle are:

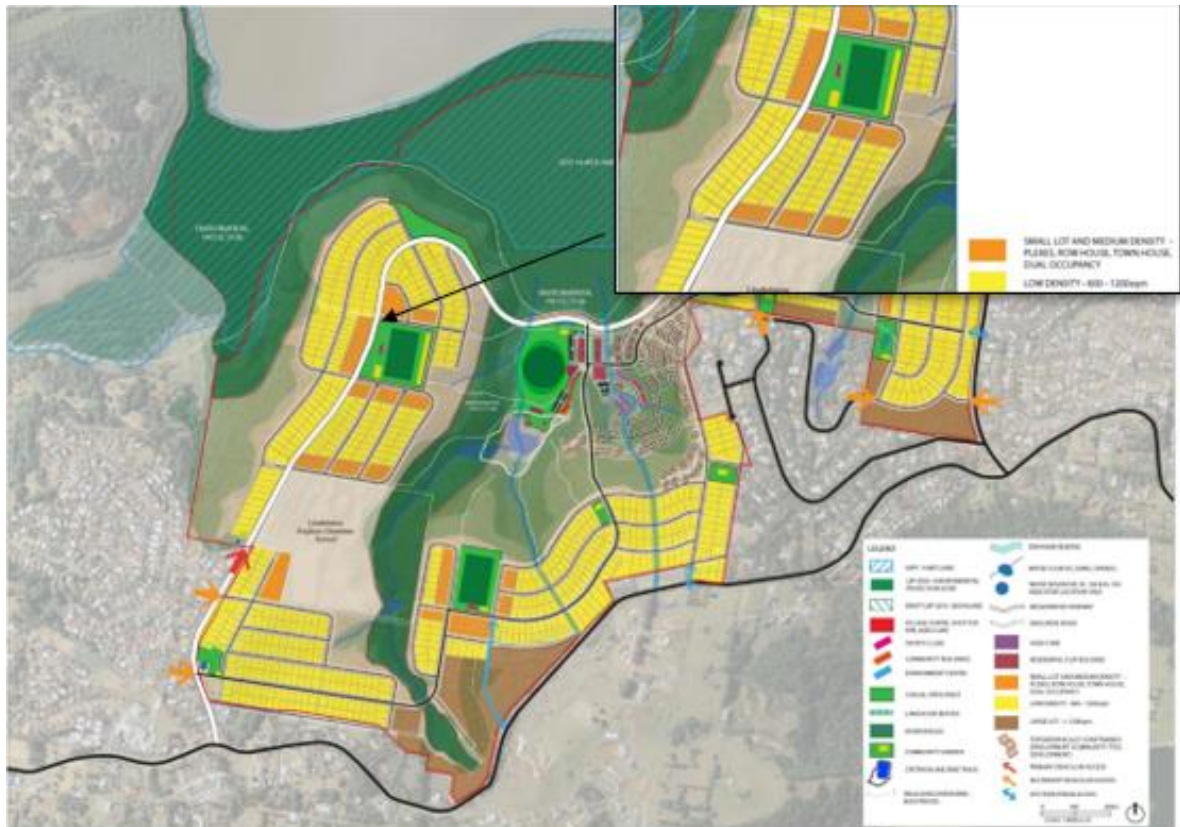
1. Prepare a Density Projection Plan, including a breakdown on plan and ancillary schedules of differing allotment sizes including but not limited to transition lots (greater than 1,200m²), large lots (greater than 800m²), suburban blocks (450-1000m²), small lots (<450sqm), courtyard house lots, zero setback lots, semi attached lots.

2. Satisfy the density yield targets identified within Table 2.1 of this Code. Where these yields can not be met, justification for the departure or variation is required. Significantly sloping land or development costs in isolation would not constitute appropriate justification. Density and yield offsets around different parts of the precinct will be considered.
3. Demonstrate the nomination (through a plan and ancillary schedule) the dwelling type and appropriate or likely structural system/s nominated to each individual lot to demonstrate the nexus between slope, allotment size and appropriate dwelling type. Note: Structural categories could include: single slab on ground, split or raft slab, hybrid slab and post and beam, post and beam construction and pole construction.
4. Allocation of transition allotments (minimum lot size of 1200m²) to interface areas where Area E adjoins existing large lot areas. These interfaces have been identified on Figure 2.12.
5. Any architectural guidelines formed as part of a subdivision application must embody the objectives and design principles and development controls within the residential section of this plan or provide suitable design based justification as to why variations from these objectives, principles and controls is sought.

The following anticipated housing/lot type is provided for in the overall Area E Urban Release Development Code:

Housing / Lot Type	Mahers Lane Precinct	Central Precinct	Fraser Drive Precinct	Total
Transitional and Large Lot Residential (Lots >800m ² or 1200m ² for Transitional)	8	60	47	115
Suburban Lot Residential (Lots between 450 – 800m ² at a general rate of 1 dwelling per 650m ² of site area)	428	265	229	922
Small Lot and Medium Density (Lots between 250 – 450m ² and medium density development at a general rate of 1 unit per 333m ² of site area)	174	58	55	287
Neighbourhood Planning Housing	0 (* but could be in lieu of some suburban lots on western facing slope)	114	32	146
Shop-Top & Village Centre Residential	0	120	0	120
Total	610	617	363	1590

Pursuant to Figure 2-2 in this Section, the following is the Indicative Structure Plan with a snip of the demarcation of lot types as it applies to the subject land.



The proposed lot layout fails to acknowledge the above dwelling density requirements. Lots in this location comprise of standard residential lots capable of supporting a single dwelling only. In order to achieve the desirable housing type in this location, larger lots would need to be afforded to this location, enabling integrated housing in the future.

Based on the above consideration, the proposal fails to satisfy Section 2.8 – Design Principle 6: Dwelling and Allotment Mix.

Section 2.9 - Design Principle 7: Urban Design, Streetscape & Public Domain

The vision for this design principle is that the village centre, main street, overland flow paths and open space areas are to form the focus for public domain embellishments within Area E. The overriding strategy is to progressively implement a range of public domain and infrastructure improvements in the village centre that address the key issues of pedestrian movement and comfort, parking and efficient vehicle movement, and improvements to the overall character and appearance of the village centre and suburban areas.

The proposed development is located within the Mahers Lane Precinct and therefore is not directly affected by this design principle. However, the lack of cycleway and pedestrian connection points in this application could give rise to issues with the development's connectivity to the future Village Centre (noting that such has not yet been delivered by other developers as yet).

(c) Section 4.15(1)(a)(iiia) – Planning agreements under Section 7.4 of the EP&A Act

The following planning agreement has been entered into under Section 7.4 of the EP&A Act (“**Planning Agreement**”):

- *Altitude Aspire Planning Agreement*

This Planning Agreement is dated 22 September 2014 and relates to the State Government approved subdivision in Area E Terranora, known as "Altitude Aspire". The requirement for the Planning Agreement satisfies Council's resolution from December 2011 in consideration of the then draft Development Control Plan B24 - Area E Urban Release Development Code (DCP-B24).

The objective of the Planning Agreement is to provide a mechanism by which monetary contributions and the dedication of land may be made by the developer towards the provision of public amenities, services and infrastructure, including:

- the construction of Broadwater Parkway and Mahers Lane;
- flood mitigation works;
- protection and restoration of environmental land;
- the provision of structured public open space;
- the dedication of land for the future route of the Broadwater Parkway; and
- the dedication of land for a public reserve buffering environmental land.

The Planning Agreement was entered into between Tweed Shire Council and Metricon Qld Pty Limited. The land to which the agreement relates is defined in the agreement as Lot 1 DP 304649, Lot 1 DP 175235, Lot '1 DP 781687, Lot 2 DP 778727, Lot 1 DP 781697, Lot 1 DP 1 69490, Lot 40 DP 254416 and Lot 43 DP 254416, Fraser Drive, Terranora.

Clause 1.1 and Clause 8 outline a schedule of developer obligations . The developer includes a person who is bound by the Planning Agreement (Metricon Qld Pty Limited).

The subject application includes a Letter of Offer to enter into a Voluntary Planning Agreement (VPA). The letter of offer pertains to the provision of monetary contributions and/or Works in Kind (or the recoupment of the consent of providing) to be made toward the provision of infrastructure, facilities and services relating to:

- a. The dedication of Open Space land to Tweed Shire Council for recreation and environmental purposes as indicated in the Statement of Environmental Effects and its attachments;
- b. The dedication of land for Drainage Reserves as indicated in the Statement of Environmental Effects and its attachments;
- c. The embellishment and maintenance of Open Space and Drainage Reserves as indicated in the Statement of Environmental Effects and its attachments;
- d. The upgrading of existing local road infrastructure required by the additional population generated by the proposed development;
- e. The construction of the Broadwater Parkway Road identified in Section B24 of the DCP;
- f. Water and sewerage infrastructure required to serve the proposed development as indicated in the Statement of Environmental Effects and its attachments; and
- g. Structured Open Space.

The subject application including the Letter of Offer does not include landowner's consent for the works on adjoining land for the purpose of Item (e) above (construction of the Broadwater Parkway Road) in the DCP and agreed to by others as part of an existing Council endorsed VPA.

The outlined water and sewer infrastructure delivery for the proposed development is unacceptable due to the limited capacity within the existing sewer and water network to cater for the proposal. To this end, the provision of sewer and water supply by other developers on their land are sequenced as part of separate future development to which Council is not in receipt of any application for at the time of preparing this report.

Ultimately, the proposed development relies upon the Broadwater Parkway Road construction, water supply and sewer infrastructure by developers bound by the Altitude Aspire Planning Agreement to satisfy Clause 6.2 and Clause 7.10 of the TLEP2014. There is no evidence in the

subject application and accompanying Letter of Offer that would indicate that an agreement has been entered into between the subject landowner and other parties bound by the Planning Agreement.

Finally, there is no mention in the Letter of Offer or accompanying documents, as to how the Environmental Management Land in the subdivision plan will be rehabilitated and maintained in perpetuity. This was raised in Councils pre-lodgement DAP meeting and is required under Section A19 of the DCP. In the absence of such provision in the Letter of Offer, the application fails to adequately cater for the proposed Environmental Management Area noting that where dedication of Environmental Management Area is provided for in the Planning Agreement, it relates to the land north and north east of the site and does not include the subject parcel of land.

Based on the above considerations, Council (as the interested party) cannot be satisfied that a new VPA could be entered into per the Letter of Offer accompanying the subject DA given that there is an existing Planning Agreement for works on land other than the site to provide critical infrastructure to service the development.

The granting of consent for the subject application based on the Letter of Offer would be inconsistent with the objects of the EP&A Act in terms of orderly and economic development of land given that infrastructure delivery could not occur in accordance with an agreed schedule of works to provide adequate arrangements for essential services such as road, water and sewer in the absence of a considerable amount of collaboration between private entities (in line with stipulations in Section B24 site Specific DCP for Area E Urban Release Development Code and Section B1 site Specific DCP for Terranora) that is beyond the control of the Council or the developer.

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

There is insufficient information for the consent authority to be satisfied the development is not Designated Development. The Regulation states that Designated Development cannot be determined however given that the subject application did not accompany an Environmental Impact Statement ("EIS") and was not lodged as "Designated Development", it is the opinion of Council that the consent authority may proceed to determination.

Notwithstanding the above, the application is recommended for refusal on the grounds that the application fails to include the required information and documents required by the Act or the Regulation pursuant to Clause 24 of this Regulation.

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

The likely impacts of the 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:

Traffic (Impact to existing road network)

The proposal is unsatisfactory in terms of the likely impact on the existing surrounding road network and the following is provided in terms of the assessment considerations:

There are significant strategic issues with the road network regarding the delivery of the planned Broadwater Parkway in terms of timing and its interaction with traffic issues with Mahers Lane school traffic and a proposed connection from the subdivision to Mahers Lane, and the intersection capacities of Mahers Lane and Henry Lawson Drive with Terranora Rd.

The submitted TIA adopts traffic generation rates of 0.71 trips per dwelling and 0.78 trips per dwelling during the morning and afternoon peak periods respectively. These trips rates are outdated and lower than that recommended under the current Transport for NSW Guide to Transport Impact Assessment 2024, being 0.83 trips per dwelling and 0.84 trips per dwelling during the morning and afternoon peak periods respectively, for sites located in regional areas. The TIA therefore underestimates the traffic generation of the proposed development. Updated SIDRA modelling will demonstrate worse intersection performance results than that documented in the TIA.

The submitted TIA fails to adequately demonstrate that the intersection of Mahers Lane with Terranora Road will operate within its capacity upon completion due to the lack of analysis and SIDRA modelling during the significant 'peak hour' of 3pm-4pm. This period is critical for assessment given it coincides with the nearby Lindisfarne School pick up time when extensive queues and delays are experienced at the Terranora Road/Mahers Lane intersection.

The SIDRA modelling results included in the submitted TIA demonstrate that the Terranora Road/Mahers Lane intersection will be over-capacity in 2033 'with development' with extensive and unacceptable delays of 63.3 seconds for the right turn from Mahers Lane into Terranora Road. Under this same 2033 'with development' scenario, the Terranora Road/Henry Lawson Drive intersection will also be over-capacity, with extensive and unacceptable delays of 79.1 seconds for the right turn from Henry Lawson Drive into Terranora Road. The results, whilst an underestimate, demonstrate the development would result in unacceptable traffic impacts and delays on the external road network in year 2033. The modelling results also demonstrate the impacts would significantly worsen by year 2038, being the 10-year horizon. Under both the 2033 and 2038 scenarios, the unacceptable delays may also lead to motorists undertaking unsafe and risky manoeuvres.

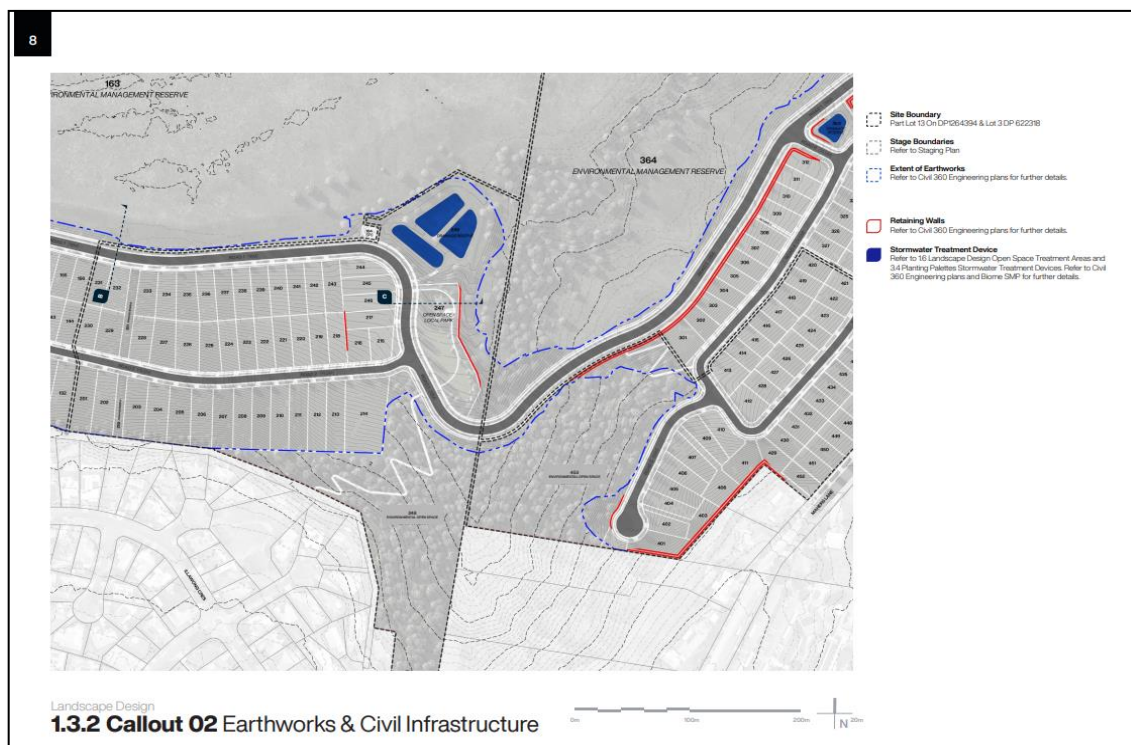
Based on the above key considerations, there is insufficient capacity in the existing road network to support the proposal and the proposal would give rise to adverse traffic and road safety impacts.

Urban Design

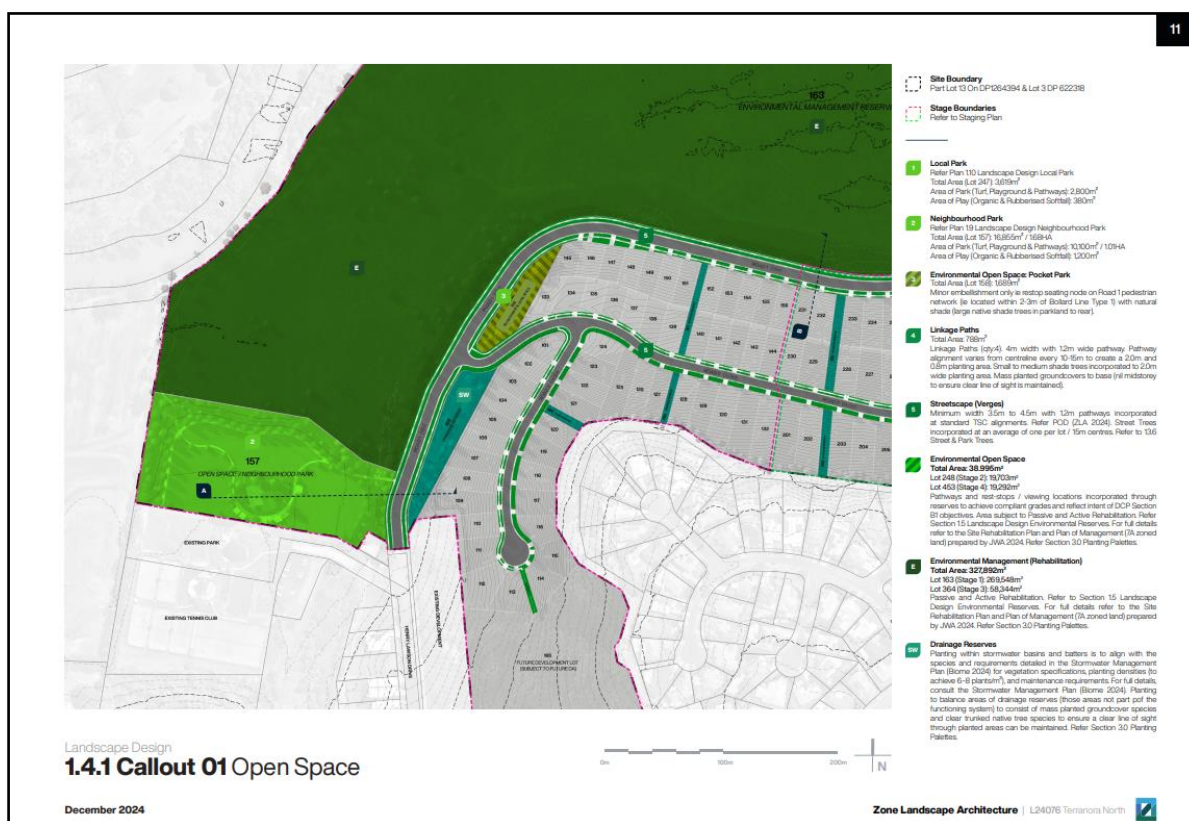
Architectural and urban design merit is missing from the proposed subdivision plans. As the DA relates purely to land subdivision, only lot configuration and layout (at a grand scale) can be assessed and its connectivity to existing uses / zones. It is considered that the proposal lacks the following urban design excellence opportunities.

- Lot size variation is minimal (creating a homogenous built form), the proposal as lodged would create very boxy single dwellings and no diversity of housing options, especially given the location to the 'school'.
- No diversity of housing or activation of the streetscape, as all the lots would accommodate majority single dwellings (on steep slopes).
- The walkability of the large subdivision is non-existent, given its proximity to an internationally acclaimed school, it would be considered prudent to assess the value of creating an increased urban diversity within close proximity of the school entrance.
- The housing affordability is directly related to the lack of mix of housing diversity, smaller units or shop top housing which may create more affordable housing within this locality.
- Connectivity across the whole site is lacking, there is no real connections to existing infrastructures / parks / shops / schools and this is considered to be a detrimental outcome for this site.

- The steep topography creates limitations on the types of housing diversity that cannot be understood without site development plans available for the steep sites and this is not provided as part of the layout of the proposed subdivision.
- Constraints of environmental outcomes affect all components of the site and do not allow or maximise usage and connection to and from the site to the other infrastructure that is located within close proximity of the development.
- The existing shops are located 1 km from the proposal, this is considered a disadvantage (car dependency) and may highlight the need for shop top housing or a central location to increase diversity and density closer to the school infrastructure, where constant flow and employment opportunities exist.
- Utilisation of the opportunity for potential employment of local residents within close proximity to the school is considered a lost opportunity.
- Active transportation nodes would apparently relate to the school routes and surrounding areas. More integrated approach is recommended, as there is no focus on this.
- The cumulative impact of the proposed development having regard to the existing road network gives rise to poor planning outcomes at this stage.
- Steep topography and proposed retaining walls across parts of the site, that appear to exceed the Tweed guidelines, (without DA house designs- this is unclear) and would create an adverse impact on the scenic landscape and surrounding development and set a negative precedent, where more appropriate site-specific house designs may be achieved, across lot variation and housing diversity.
- Under the Tweed's Scenic Landscape Protection Policy, the site is mapped as highly visible, with a total of 15 priority viewsheds identified for the Mahers Lane site. Should this application be reconsidered in the future, a revised Visual Impact Assessment will be required to address the Council endorsed Tweed Scenic Landscape Protection Policy.
- The site is incredibly steep across a substantial part of the site. The documentation seems to light on in terms of providing site sections demonstrating interrelation between the urban structure (road layout), lots and how a house could be reasonably built on it. Particularly given many sites would be best suited as a 'pole house' construction due to extreme slope (typically only suitable on the downslope). Clarification is sought on how this would be addressed at DA stage, if steep slopes are approved in the subdivision stage.
- Concern is raised in relation to Plan 08 of 44 that depicts substantial retaining walls required to address Road 1 (meaning there is no street frontage / address). The excessive height might also mean the buildings appear excessive in height. This road design runs a risk that Road 1 becomes only a car-based thoroughfare, which is against the odds of the objectives of a positive and integrated new development and streetscape that promotes walkability and interface between people and houses at the street level.

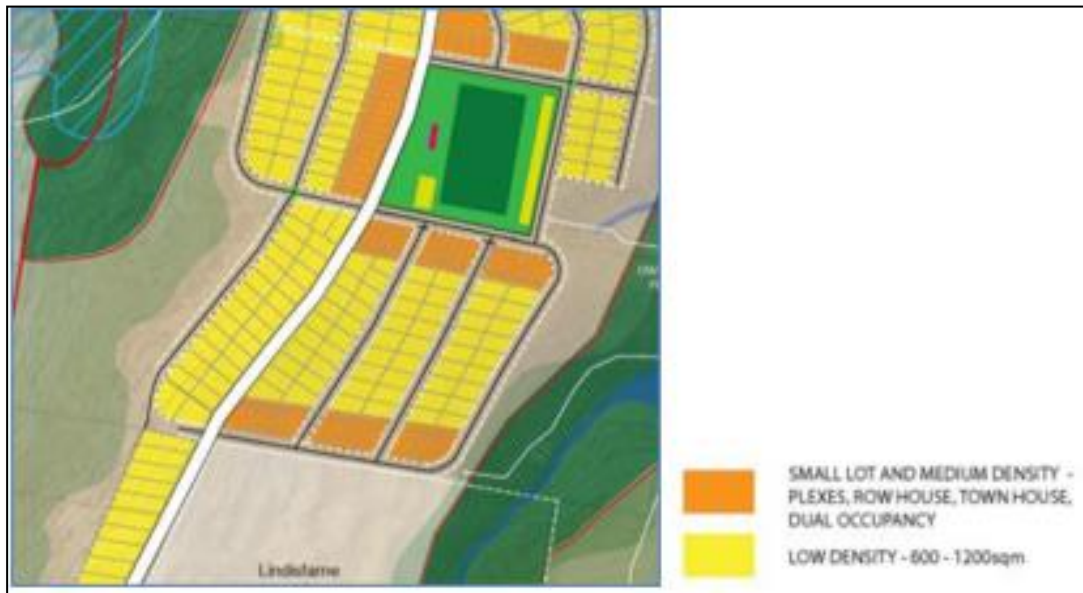


- Similarity on Plan 11 of 44, the proposed neighbourhood park has no interface to the public domain /proposed dwellings and addresses a drainage reserve, thereby limiting the opportunity to increase walkability, usability and promote a desirable streetscape interaction. In addition, the design losses the ability of the proposed park having any passive surveillance keeping the park safe all day around, as no houses address the proposed park.



Landscape and park design / road verge design are considered positive, however they lack demonstrated evidence via an integrated approach to incorporate the development / proposed lots / retaining walls and parkland locations. Such as the lack of passive surveillance of parks and new roads (due to need for large retaining walls) is a significant lost opportunity to enhance the landscaping and the urban design and proposed layout of the new development.

The above issues in relation to density are also a contravention of Section B24 (Area E Urban Release Development Code) of TDCP2008 which states as follows for the site:



This is of relevance due to the residential density targets identified in this DCP for the Mahers Lane Precinct (and Area E as a whole). 428 suburban lots are proposed in this precinct. These density targets have been reproduced below:

Housing / Lot Type	Mahers Lane Precinct	Central Precinct	Fraser Drive Precinct	Total
Transitional and Large Lot Residential (Lots >800m ² or 1200m ² for Transitional)	8	60	47	115
Suburban Lot Residential (Lots between 450 – 800m ² at a general rate of 1 dwelling per 650m ² of site area)	428	265	229	922
Small Lot and Medium Density (Lots between 250 – 450m ² and medium density development at a general rate of 1 unit per 333m ² of site area)	174	58	55	287
Neighbourhood Planning Housing	0 (* but could be in lieu of some suburban lots on western facing slope)	114	32	146
Shop-Top & Village Centre Residential	0	120	0	120
Total	610	617	363	1590

It is considered necessary that any application would maintain the ability for the site and precinct to meet the ultimate density requirements for the site (i.e. comparable to 56 low density residential allotments and 17 small lot and medium density allotments).

Public Domain

Active transport connections from the proposed development to surrounding community infrastructure, such as Lindisfarne Anglican Grammar School (the school), are poor or non-existent. Furthermore, the lack of information available to assess the embellishment of open space gives rise to concerns over whether the proposed provision of open space is suitable. Based on these considerations the proposed development will have adverse impact on the public domain given there is a lack of integration between existing built form and the proposed development and high quality open space to support the future needs of this population.

Utilities

The proposal fails to have adequate utility infrastructure to service the scale of the proposal. The proposal seeks to connect to existing road, water and sewer services, that are unable to cater for the proposal.

Heritage

There is insufficient information to ensure the proposal will not have an impact on predicted Aboriginal Cultural Heritage values. Therefore, the proposal could give rise to loss of cultural heritage values in the absence of appropriate investigations based on the sale of the proposal.

Flora and fauna impacts

The proposal, in its current form, will have adverse impact on flora and fauna. In particular, irreversible loss of listed EEC. There is insufficient information available to demonstrate that the adverse impact is compensated for appropriately under the Biodiversity Conservation Act 2016.

Natural environment

There is insufficient information to demonstrate that geotechnical values of the land can be maintained or accommodated for as a result of bulk earthworks associated with the proposal. Furthermore, the extent of works required for future dwellings on the lots would have unreasonable cost burdens on the future land owners, rendering the investment of the land and dwelling construction to be potentially unviable.

Economic impact

The result of the natural environmental features of the land from a geotechnical perspective would have ongoing economic impacts on future land owners in the community.

Construction Noise

Noise from the construction phase has been raised as a community concern. The primary noise focus for the subject development would be the construction phase and whilst a construction noise management plan has been submitted, further amendments are necessary to ensure that impact of construction noise is acceptable. As such, in the absence of a comprehensive Construction Noise Assessment and management, the impact of construction noise is not acceptable in the circumstances on this DA (particularly having regard to the likely timeframe for noise impacts during construction).

Bushfire

As discussed throughout this report, the submitted Bushfire Report is not acceptable in terms of its performance solution to require a no fuel zone in Environmental Management Land, to be dedicated to Council.

Contamination

The submitted Preliminary Site Investigation (PSI) fails to satisfy the relevant matters for consideration under Clause 4.6 of SEPP (Resilience and Hazard) 2021 given remedial type works are required. In accordance with NSW EPA Statutory Guidelines, further information is required (DSI and/or RAP). In the absence of this information, the consent authority cannot be satisfied that the land is suitable for residential development.

Dewatering

The subject site is identified as being moderately high to high groundwater vulnerability. It is unclear, based on the information supplied, whether the proposal would intercept groundwater. Particularly as part of the installation of any essential services infrastructure etc. In the absence of a Dewatering Management Plan, the consent authority cannot be satisfied that appropriate environmental management measures can be employed to mitigate the impact of dewatering and maintaining water quality.

Acid Sulfate Soils

The submitted ASSMP fails to include the minimum information required to address statutory consideration under relevant EPI's. In particular, it is notable that the ASSMP fails to include the referenced leachate management and monitoring information (noting that its possible that the leachate monitoring would coincide with dewatering management and water quality treatment requirements). In the absence of this information, the consent authority cannot be satisfied that ASSMP would not have adverse impact on the natural and built environment.

Safety, security and crime prevention

the proposal fails to include detail of how the proposal performance against CPTED principles. Particularly having regard to the lack of connectivity and adequate opportunity for passive surveillance from proposed residential lots, to the open space areas.

Social impact

The lack of pedestrian connectivity fails to provide cohesion between existing public and private infrastructure and the proposed urban footprint.

Construction

There is insufficient information available to determine whether the Geotechnical qualities of the land are able to support the proposed earthworks and future dwelling construction. In the absence of such and having regard to the steep topography of the land, the consent authority cannot be satisfied that the development will not have adverse impact on downslope land (which is a wetland).

Tweed Scenic Landscape Protection Policy

The subject site is mapped as highly visible, with a total of 15 priority viewsheds identified for the Mahers Lane site. The submitted Visual Impact Assessment fails to include the required detail in relation to 3D montages of built form having regard to significant views/vantage points in the region.

This information is considered relevant for the assessment in order to determine the impact of the proposal (particularly having regard to approved development and anticipated Hilltop Park at the prominent location of the site). As such, based on the information available, the consent

authority cannot be satisfied that the proposed urban footprint is consistent with the aims and objectives of this policy and will not have adverse visual impact.

Accordingly, it is considered that the proposal will result in significant adverse impacts in the locality based on the matters for consideration outlined above.

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

Based on the environmental features of the land, it is unclear whether the site is suitable for the proposal from an environmental perspective. However, having regard to the provision of utility and services, which is fundamentally restricted at this time, the site, at present, is not considered to be suitable for urban subdivision of this scale.

As such, the application is recommended for refusal.

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

These submissions are considered in Section 5 of this report.

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

The proposal, in its current form, is not considered to be in the public interest. The consent authority cannot be satisfied that appropriate environmental impacts have been responded to and can be managed on the site. There is also a fundamental concern that provision of lacking information would give rise to a jurisdictional barrier in assessing the application in the absence of an Environmental Impact Statement.

In addition, the impact of the proposal in terms of urban infrastructure that is essential for the residential subdivision of land is unacceptable. There is no sewer capacity in the existing reticulated network, the development lacks adequate water supply to cater for the proposed population (due to the water reservoir being allocated to Area E) and the road network is not suitable for the proposal in terms of capacity at nearby intersections.

There is information lacking to ensure that contamination, groundwater and stormwater management, as well as management/treatment of Acid Sulfate Soils, embellishment and dedication of open space are addressed. The environmental qualities and features of the land, the impact the proposal will have on the wetland and civil engineering issues (geotechnical and structural requirements for future dwellings) have also not been addressed and would have adverse consequences on future landowners in terms of construction costs of dwellings.

The cumulative effect of the above raised issues and the lack of information would result in the development being contrary to the objects of the Environmental Planning & Assessment Act 1979.

3. REFERRALS AND SUBMISSIONS

i. Agency Referrals and Concurrence

The development application has been referred to various agencies for comment, concurrence and/or 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
Referral/Consultation Agencies			
Essential Energy	Section 2.48 – <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> Development near electrical infrastructure	No objection. General comments provided.	Y
Transport for NSW	Section 2.121 – <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> Development that is deemed to be traffic generating development in Schedule 3.	No objection subject to appropriate impact assessment by Council.	Y
Tweed Byron Local Aboriginal Land Council	Aboriginal Cultural Heritage Management Plan 2018 (ACHMP)	Insufficient information. More detailed Aboriginal Cultural Heritage Assessment required.	N
Integrated Development (S 4.46 of the EP&A Act)			
RFS	S100B - <i>Rural Fires Act 1997</i> bush fire safety of subdivision of land that could lawfully be used for residential or rural residential purposes or development of land for special fire protection purposes	No objection subject to General Terms of Approval.	N*
NSW Department of Industry and Environment – Water Operations	Controlled Activity Approval pursuant to Clause 91 of Water Management Act 2000 for works within 40m of mapped watercourse.	Additional Information requested	N
NSW Department of Industry and Environment – Fisheries	General Terms of Approval pursuant to Section 205 Fisheries Management Act 1994	Additional Information requested	N

**see assessment comments under Clause 39A of TLEP2000 and Clause 5.11 of TLEP2014 in relation to the provision of APZ and 'No fuel zones' on EEC or EEC buffer areas to be dedicated to Council. BFS Performance Solution for reduced APZ not accepted and GTA's are reliant on this Performance Solution.*

ii. Council Officer Referrals

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

Table 6: Consideration of Council Referrals

Officer	Comments	Resolved
Development Engineering	Not supported	N
Traffic Engineering	Not supported	N
Flooding & Stormwater Engineering	<p>Request for information:</p> <ol style="list-style-type: none"> The applicant has stated the following in terms of upstream stormwater management: <p>In order to protect the subject development site from upstream stormwater discharge, the stormwater from the nearby Terranora Village area is required to be captured by an upgraded drainage system (channels and pipes) in the public reserve along the southern boundary of stages 1 and 2 of the Site. <u>These works are illustrated and addressed for assessment purposes but do not form part of the development application</u> and will be the subject of a future application under Section 68 of the Local Government Act, 1993.</p> <p>Refer to Biome Stormwater Management Plan 127-137 Mahers Lane, Terranora (November 2024) for further information regarding the existing stormwater on and adjacent the proposed development site.</p> <p>Detailed drainage information for conveyance of stormwater from existing urban residential external catchments is required at DA stage, not Section 68 stage. The application has not provided sufficient detail on drainage pipe sizing, inlet pits and configuration from the upstream urban residential catchment to demonstrate the northern wetland will not be significantly impacted. The application is to clearly demonstrate how upstream stormwater is actually managed from existing upstream urban areas. Detailed engineering drawings are to be provided, demonstrating how the existing stormwater outlets are connected to the three proposed engineered channels. Stormwater pipe sizing, inlet detail / sizing and stormwater hydraulic longitudinal sections are to be provided to demonstrate the proposed stormwater design can actually work, is in accordance with Australian Standards and Tweed Shire Council Design Specification D5 – Stormwater Design.</p> Four channels of varying widths are proposed to convey stormwater flows (1% AEP storm events) from the northern urban developed catchments through the future subdivision to the bio-retention basin/s. The engineered stormwater channels comprise of stepped gabions and rock mattresses with steep gradients from 30% to 50%. <p>The Biome Report has provided design flows for the proposed channels which results in velocities up to</p>	N

	<p>2m/s. These are high velocities and the gabions should incorporate safety considerations.</p> <p>The proposed gabion channels are to be redesigned to incorporate a design suitable for residential development. The gabion channels are a public safety issue creating a high hazard floodway with little freeboard and no public safety improvements. The redesign of the gabion channels is to consider:</p> <ul style="list-style-type: none"> • Public safety • Visual amenity • Removal of proposed sewer infrastructure from the channels • Minimum freeboard of 0.5m • Consequence of flows greater than 1% (Q100). Will storm events greater than the 1% AEP event flow onto the proposed allotments and cause landslip / scour issues. • Hydraulic design longitudinal sections for all stormwater channels and pipes. • Velocity / depth criteria from D5.12 to be addressed. <p>3. Sewer infrastructure to be removed from gabion channels.</p> <p>4. Anomaly in Engineering Services report to be clarified. Upstream urban catchment identified as having a catchment of 18.5Ha and the Biome Report having an area of 6.47Ha.</p> <p>5. Three 1800mm x 1200mm Reinforced Box Culvert are proposed to convey upstream drainage around future bio-retention basin B. The capacity of the proposed culvert configuration is to be confirmed to confirm that the culverts are sufficient to convey the 1% AEP storm event from upstream catchments.</p> <p>6. Further information is to be provided on how upstream stormwater conveyance will impact on the existing gravel track and wetland to the north. Are stormwater outlets proposed, or will the track create a bund type flooding situation not allowing water to flow to the wetland?</p> <p>Councils Stormwater and Flooding Engineer recommended an expert in Wetland Hydrology assess the following reports for DA25/0011 to determine if the application is designated and requires an Environmental Impact Statement:</p> <ul style="list-style-type: none"> • Stormwater Management Plan (Quality) & Conveyance Assessment prepared by Biome dated December 2024 - Hydraulic Conveyance Assessment Section 5 only • Wetland Hydrology Assessment prepared by Gilbert and Sutherland dated December 2024 	
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	<ul style="list-style-type: none"> • Surface and Groundwater Monitoring Plan prepared by Gilbert and Sutherland dated December 2024 • Baseline Water Quality Report prepared by Gilbert and Sutherland dated December 2024. 	
Water and Wastewater Engineering Unit	<p>Not supported for the following reasons:</p> <p>Water</p> <ol style="list-style-type: none"> 1. The proposal suggests that the site can be serviced using the Rayles Lane Large Reservoir. The available capacity within this reservoir has been fully allocated to the higher elevations of Area E as well as infill development with the Terranora area. The allocation of this capacity is not available for the lower sections of Henry Lawson Drive and the areas within the proposed development would need to be supplied by the future Mahers Lane reservoir. As such the interim provisions for Stage 1 and 2 are not suitable and therefore adequate arrangements for water supply for any part of the development are not available. 2. The construction of the Mahers Lane reservoir, booster pump station and associated pipework is required to service this development to meet Councils service standards. <p>Sewer</p> <ol style="list-style-type: none"> 3. It is proposed that each allotment within the subject development will be connected to Council's sewerage network via a gravity system discharging to a new sewer pump station (SPS) located on a separate allotment. This SPS will ultimately discharge to Banora Point Wastewater Treatment Plant. This sewer strategy is not supported by Council. 4. The existing Sewerage Pump Station (SPS) 3033 and the Sewer Rising Main (SRM) is at capacity and unable to accommodate any additional urban residential development beyond that already approved. 5. Due to the low elevation of the sewer pump station the pumps will be producing approximately 80m head of pressure when pumping simultaneously with the SPS3033. This is considered to be excessive and further exacerbates the performance of SPS3033 and is unacceptable to Council as previously advised in DAP. The maximum pressure Council is willing to accept is 50-55m head pressure. 6. The proposed sewer system appears to be designed to a 50% AEP while the design requirements require designing to 20% AEP. The incorrect intensity factor has been applied (the correct value should be 59mm/hr). 	N

	<p>This is likely to further exacerbate the previously raised issue in relation to head pressure.</p> <p>7. There are further constraints within the RM3033 SPS3033 system besides pressure including the available discharge and pump capacities at SPS3033. These aspects of the sewer strategy have not been suitably addressed.</p> <p>8. The majority of subject Lot 13 was noted to be public reserve space as per application s96/0066. Council has allocated loading based on the previous planning approvals within this development area. The conversion of public reserve space to urban residential development has not been adequately identified or addressed.</p> <p>The draft sewerage strategy report for the Area E development provides for capacity within the sewerage system for the Area E development to service the urban area.</p>	
Building	No objection	Y
Environmental Health	<p>Request for information:</p> <ol style="list-style-type: none"> 1. Contamination Detailed Site Investigation (DSI) and/or Remediation Action Plan (RAP) 2. The ASSMP that proposes to dispose of treated ASS on site may warrant further consideration due to potential surface water run-off, potential long-term stability, potential use and impact on fish habitats resulting from this approach. Any further information regarding ASS would need to be referred to a hydrogeological consultant, geotechnical consultant and Fisheries. 3. Construction Noise Assessment and Management due to longevity of construction noise over a 2 year period. <p>Dewatering: The site is identified as being moderately high to high groundwater vulnerability. The applicant would be required to confirm whether the proposal will intercept groundwater and if dewatering will be required as part of the installation of any essential services infrastructure and the like (this aspect of the proposal may need to be considered by a hydrogeological consultant).</p>	N
Sustainability & Environment	<p>Not supported for the following reasons:</p> <ul style="list-style-type: none"> • The Biodiversity Development Assessment Report has not been prepared in strict accordance with the NSW Biodiversity Assessment Method 2020. • The proposal does not accurately identify the extent and type of threatened biodiversity entities present. 	N

	<ul style="list-style-type: none"> • The proposal does not sufficiently document suitable measures to avoid and mitigate impact to threatened entities, including Serious and Irreversible Impact (SAIL) species. • The proposal is not consistent with Section A19 Biodiversity and Habitat Management of the DCP 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 in-perpetuity. • The proposal fails to adequately address and respond to the Tweed Coast Comprehensive Koala Plan of Management 2020. • 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. • The proposed layout is inconsistent with the Area E structure plan. The development is proposed beyond the urban development footprint resulting in impact upon biodiversity values. 	
Waste Operations	No objection	Y
Parks and Active Communities	<p>Request for information:</p> <p>Structured Open Space</p> <p>1. A Letter of Offer has been submitted to enter into a VPA. The Letter of Offer indicates structured open space will be provided for as well as dedication of land for casual open space (COS) (noting an oversupply of COS).</p> <p>There is no detail on what the VPA would include. Whilst the proposed open space is not consistent with what is mapped in the applicable DCP (Section B1 Terranora), the proposed relocation has some merit due to the potentially more usable open space that would result. This is subject to further consideration of comments or concerns which may be raised by Councils Development Engineering.</p> <p>Neighbourhood Park</p> <p>2. Confirmation of usable area for Neighbourhood Park is required given the extent of filling. Concerns are raised that once the fill batter and drainage areas are finalized, the batter may encroach the buffer to the environmental land.</p> <p>3. Vehicle access (for services and public) is not provided for and the road frontage is very limited (does not comply) given the shape of park. This may be addressed if consolidated with the adjacent park.</p>	N

	<p>4. The duplication of the playground is unnecessary noting the adjoining playground. However, placement of the park adjacent to tennis courts and the existing park provides opportunities to consolidate public open space. Further discussion with proponent about possible embellishments for this site requested, should development proceed.</p> <p>5. Fill is proposed to be ASS from elsewhere on site. Insufficient information has been provided to satisfy Council's Environmental Health section regarding this aspect of the proposal.</p> <p>Local Park</p> <p>6. The park appears to achieve the minimum size but confirmation of usable area is required in terms of gradient and that drainage line/diversion is suitable and doesn't encroach park area.</p> <p>7. The park's configuration/shape indicates that road frontage and shape may be slightly under-compliant but could be accepted if other matters are addressed. The central play area is slightly too small and the distance to the road is too short which would require fencing.</p> <p>8. The provision of roadside/street parking is unclear.</p> <p>Environmental pocket park</p> <p>9. This space is too small to be credited as open space for recreation purposes.</p>	
Strategic Planning and Urban Design	<p>Not supported for the following reasons:</p> <p>Insufficient information has been provided in relation to creating positive urban design outcomes that complies with Tweed LEP's, Section A5 of the DCP, Tweed Scenic Landscape Protection Policy, North Coast Regional Plan (NCRP) and Tweed Local Strategic Planning Statement (LSPS) (see key issues for the urban design and planning concerns).</p>	N
Social Planning	<p>Not supported for the following reason:</p> <p>The indicative structure plan under Section B24 of the DCP includes a section of small lot/medium density housing within this site. The applicant has not included any in this subdivision. Increased density of housing will deliver on both Section B24 requirements and the Tweed's Growth Management Housing Strategy (GMHS).</p> <p>The strong community feedback around traffic and road safety is of relevance to this proposal. The applicant made a comment in the social impact assessment report that they will manage construction vehicle access to minimise any potential conflicts with peak pedestrian times on Mahers Lane near the school.</p>	N

	This should be provided for review during the assessment of the DA or required via condition of consent.	
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The outstanding issues raised by Council officers are considered in the Key Issues section of this report.

iii. Community Consultation

The proposal was notified in accordance with the Tweed Shire Councils Community Participation Plan from 22 January 2025 until 19 February 2025. The notification included the following:

- An advertisement in the local newspaper (Tweed Link);
- A sign placed on the site;
- Notification on Councils website (DA Tracker); and
- Notification letters sent to adjoining and adjacent properties (267 letters issued).

The Council received a total of 39 unique submissions, all of which essentially objected to the development. The issues raised in these submissions are considered in **Table 7**.

In addition, one (1) late submission was also received. The late submission has been addressed in a previous section of this report (Public Interest).

Table 7: Community Submissions

Issue	No of submissions	Council Comments
Traffic Impact Submissions raised concerns the development will adversely impact the existing road network. Particularly Mahers Lane/Terranora Road intersection.	32	Council's Traffic Engineer has reviewed the proposal and advised there is no capacity in the existing road network to accommodate the proposal. The application is recommended for refusal on these grounds.
Earthworks/Geotechnical stability of the land and topography too steep (refer to recent landslide)	9	Concerns are raised over the geotechnical stability of the land having regard to the recent landslide. As discussed in this report, the submitted Geotechnical Report is insufficient and this has formed a reason for refusal.
Impact to Wetland	7	These issues have been raised throughout the report and give rise to reasons for refusal on the grounds of "insufficient information" as well as failed performance against Biodiversity Conservation Act 2016, Chapter 2 of SEPP (Resilience and Hazards) 2021 and Section A19 of the DCP.
Location of reserve/ Open Space	4	Concerns are raised that the approved layout included the provision of Hilltop Park (reserve

		<p>area) and the expectation that dwellings on the high side of Chisholm Court would have a view across the wetland to the Terranora inlet and that the land in which the open space was approved was not suitable to building dwellings on.</p> <p>The proposed layout seeks to fill the hilltop park area with dwellings and relocate the open space elsewhere on the site (adjacent to existing tennis courts).</p> <p>This issue is acknowledged, and it is agreed that as part of the original consent (and subsequent modifications), that there was approval for open space in the form of a “greenbelt” at the hilltop section of the site. This therefore, is the likely community expectation of the final arrangement for the planned neighbourhood. Furthermore, as outlined in this report, the proposed distribution of open space and residential lots deviates from the Locality Plan in Section B1 Terranora, which is an adopted DCP that was exhibited in accordance with relevant Council policies and procedures. At this stage, based on the information available, there is insufficient merit to support the variation to Section B1 and therefore the application is recommended for refusal on these grounds.</p>
Impact to Koala Habitat	3	As outlined in this report, the proposal fails to address relevant provisions under Chapter 3 and 4 of SEPP (Biodiversity and Conservation) 2021. As such, the application is recommended for refusal on these grounds.
Bushfire Protection	2	This issue is valid and forms a recommended reason for refusal given that the bushfire protection measures proposed are considered to be inadequate having regard to water supply, temporary access based on staging and required management of land that could have ecological value.
Mosquito Biting	2	Concerns were raised over the increased population and the likeliness of bites. The application is accompanied by an appropriate report to address the required buffer distances from the mosquito habitat and treatment areas. However, the lack of information in relation to stormwater management and disposal (to ensure water is not left stagnant in low lying areas) results in the developments failed performance against objectives of

		Section A6 Biting Midge and Mosquito Control of the DCP.
Pedestrian Connectivity Lack of pedestrian cycleway network to local public and private infrastructure (schools)	1	The site is within proximity to both public and private infrastructure including private and public schools and parks. The proposal fails to include adequate detail of proposed pedestrian links/cycleways to aid connectivity between the proposed development and existing urban areas. As such, the application is recommended for refusal on these grounds.
Road safety The additional traffic in the existing local road network would impact road safety for both vehicle and pedestrians.	1	This issue fundamentally relates to the safety impacts resulting from additional strain on the existing road network. This strain is noted, and the application is recommended for refusal on these grounds.
Noise Traffic noise will be increased as a result of the proposal in the absence of appropriate alternate access roads being constructed to alleviate traffic congestion.	1	This issue fundamentally relates to the existing road network capacity and the amenity impact on the urban areas which would experience increased traffic in the locality as a result of the proposal. The application is recommended for refusal on these grounds as well as concerns in relation to construction noise impacts.
Construction Noise Impact Assessment	1	The submitted Construction Noise Impact Assessment Report fails to adequately include specific information to ensure that the impacts are acceptable. The report is therefore considered to be insufficient.

4. KEY ISSUES

The following key issues are relevant to the assessment of this application having considered the relevant planning controls and the proposal in detail:

a) Lack of public utility infrastructure and road network capacity

i. Water

Councils Wastewater Unit (WWU) have reviewed the proposal and advised that there is no capacity within the nominated water reservoir to service the proposed development. The available capacity within this reservoir has been fully allocated to the higher elevations of Area E as well as infill development with the Terranora area.

The future Mahers Lane reservoir, booster pump station and associated pipework would need to be constructed to service this development. Whilst there is a letter of offer to enter into a VPA which refers back to the stipulations in the Statement of Environmental Effects (SEE) as far as water and sewer servicing is concerned, the SEE states:

“Once the capacity of the Rayles Lane Reservoir is exceeded, the 1.5ML Mahers Lane Reservoir and associated trunk infrastructure will need to be delivered. These works are

intended to occur under a Voluntary Planning Agreement (VPA) with Tweed Shire Council and depend on sequencing of development approvals within Area E”.

In terms of sequencing of development in this region; Council notes no provisions have been made for the said infrastructure associated with water supply and where consent has been granted for development in the area, it has been granted on the basis that those developments rely on another reservoir within the vicinity of the site which has capacity.

Council does not have resources to construct Mahers Lane Reservoir and the need for such to occur would be triggered by the first DA that relies on this water supply.

The current application seeks to rely on existing capacity in the first instance and as mentioned it does not exist as it has been allocated elsewhere.

ii. Reticulated Sewer

In terms of sewer, it is proposed that each allotment within the subject development will be connected to Council's sewerage network via a gravity system discharging to a new sewer pump station (SPS) located on a separate allotment. This SPS will ultimately discharge to Banora Point Wastewater Treatment Plant. This Sewer strategy is not supported by Council.

- The existing SRM which connects to Sewerage Pump Station (SPS) 3033 and the Sewer Rising Main (SRM) is at capacity and unable to accommodate any additional urban residential development beyond that already approved.
- Due to the low elevation of the sewer pump station, the pumps will be producing approximately 80m head of pressure when pumping simultaneously with the SPS3033. This is considered to be excessive and further exacerbates the performance of SPS3033 and unacceptable to Council as previously advised in the pre lodgement meeting (note: the maximum head pressure Council is willing to accept is 50-55m head pressure).
- The proposed sewer system appears to be designed to a 50% AEP, the design requirements are to be for 20% AEP. The incorrect intensity factor has been applied (the correct value should be 59mm/hr). This is likely to further exacerbate the previously raised issue.
- There are further constraints within the RM3033 SPS3033 system besides pressure. These are the available discharge and pump capacities at SPS3033, these aspects of the sewer strategy have not been suitably addressed.
- The majority of subject Lot 13 was noted to be public reserve space as per application s96/0066. Council has allocated loading based on the previous planning approvals within this development area. The conversion of public reserve space to urban residential development has not been adequately identified or addressed.
- The draft sewerage strategy report for the Area E development provides for capacity within the sewerage system for the Area E development to service the urban area.

Council, in its strategic planning framework, relies on Area E to establish a reticulated sewer network that the site could connect to in the future. However, as previously mentioned, at this stage developments have been consented to for development in Area E that would necessitate the new reticulated sewer. It is considered that the subject application is premature to other development occurring within the vicinity of the site.

Based on the above issues, the consent authority cannot be satisfied that adequate arrangements have been made for the provision of Essential Services for the supply of water and disposal and management of sewage pursuant to Clause 6.2(1) and Clause 7.10 (a) and (c) of TLEP2014.

iii. Road network capacity

There are significant strategic issues with the road network regarding the delivery of the planned Broadwater Parkway in terms of timing and its interaction with traffic congestion with Mahers Lane school traffic and a proposed connection from the subdivision to Mahers Lane, and the intersection capacities of Mahers Lane and Henry Lawson Drive with Terranora Rd.

The submitted TIA adopts traffic generation rates of 0.71 trips per dwelling and 0.78 trips per dwelling during the morning and afternoon peak periods respectively. These trips rates are outdated and lower than that recommended under the current Transport for NSW Guide to Transport Impact Assessment 2024, being 0.83 trips per dwelling and 0.84 trips per dwelling during the morning and afternoon peak periods respectively, for sites located in regional areas. The TIA therefore underestimates the traffic generation of the proposed development. Updated SIDRA modelling will demonstrate worse intersection performance results than that documented in the TIA.

The submitted TIA fails to adequately demonstrate that the intersection of Mahers Lane with Terranora Road will operate within its capacity upon completion due to the lack of analysis and SIDRA modelling during the significant 'peak hour' of 3pm-4pm. This period is critical for assessment given it coincides with the nearby Lindisfarne School pick up time when extensive queues and delays are experienced at the Terranora Road/Mahers Lane intersection.

The SIDRA modelling results included in the submitted TIA demonstrate that the Terranora Road/Mahers Lane intersection will be over-capacity in 2033 'with development' with extensive and unacceptable delays of 63.3 seconds for the right turn from Mahers Lane into Terranora Road. Under this same 2033 'with development' scenario, the Terranora Road/Henry Lawson Drive intersection will also be over-capacity, with extensive and unacceptable delays of 79.1 seconds for the right turn from Henry Lawson Drive into Terranora Road. The results, whilst an underestimate, demonstrate the development would result in unacceptable traffic impacts and delays on the external road network in year 2033. The modelling results also demonstrate the impacts would significantly worsen by year 2038, being the 10-year horizon. Under both the 2033 and 2038 scenarios, the unacceptable delays may also lead to motorists undertaking unsafe and risky manoeuvres.

Based on the above key considerations, there is insufficient capacity in the existing road network to support the proposal.

b) Biodiversity Impacts

The proposal fails to comply with required buffer distances from the coastal wetland and also fails to comply with Section A19 of Tweed DCP 2008 having regard to the fundamental development envelope controls (DEC) where relating to red flagged values including:

- The direct removal of threatened entities
- Significant encroachment into ecological setbacks/buffers from adjacent red flagged values including Coastal Wetland Areas (Important Wetlands), EEC's and waterways without sufficient justification for the variation to the controls.
- The filling of a first order waterway and alteration to the existing drainage regime
- The proposed perimeter road fails to include fauna sensitive design measures such as (but not limited to) sufficient culvert/overpass/ bridge sections across waterways to facilitate fauna movement.

Based on the information submitted, it is considered that the proposed variation to required buffer distances from the wetland is likely to have an adverse impact on EEC. Particularly those which is dependent on high saline environment (saltwater). There is also a lack of information to properly assess this aspect of the proposal in terms of stormwater drainage information, proper groundwater impact assessment and ecological impact assessment.

Council has not been provided sufficient information to ensure that provisions are made for the long-term management to ensure that Environmental Management land can be managed in-perpetuity. The applicant has provided a Letter of Offer to dedicate land for environmental purposes, however, has failed to detail in-perpetuity management and funding arrangements for the proposed reserve land. The one-year establishment phase and four-year maintenance phase as detailed in the site Rehabilitation Plan dated December 2024 prepared by JWA Ecological Consultants does not reflect or provide for long term in-perpetuity management and is therefore unacceptable.

On these grounds (and having regard to bushfire issues discussed below), Council does not accept the proposed dedication of Environmental Management Land.

c) Bushfire Protection measures are inadequate having regard to the proposed urban footprint and the extent of APZ's.

The subject application is defined as Subdivision and therefore forms Integrated Development requiring a Section 100B Bushfire Safety Authority Certificate from NSW Rural Fire Service (RFS).

On Monday 24 March 2025, NSW RFS issued a Bushfire Safety Authority under Section 100B of the Rural Fires Act 1997. Condition 1 of the Bushfire Safety Authority General Terms of Approval states:

At the issue of a subdivision certificate and in perpetuity, the entire site of the road reserves Including the 'No Fuel' area at the end of Road 5 identified in Figure 8 of the Bushfire Assessment Report prepared by Bushfire Risk, reference 2203ZON1795b dated 9 December 2024 and Lots 101 -156, 201 – 243, 301 - 362 and 401 - 452 shall be managed as an inner protection area (IPA) in accordance with the requirements of Appendix 4 of Planning for Bush Fire Protection 2019.

The submitted Bushfire Risk Assessment includes a performance solution to substantiate a departure from Planning for Bushfire Protection (“PBP”) 2019. In particular, the submitted report requires a “No Fuel” zone within the proposed “Environmental Management Area” at the end of Road 5 in Stage 4 of the development, this land is proposed to be dedicated to Council. As previously mentioned, fundamentally, Council does not accept the dedication of land in the absence of long term measures to manage such land in perpetuity (see Key Issue B above).

However, in addition to the above, Council officers have identified discrepancies in the recommendations of the Bushfire Report and the submitted plans in terms of bushfire protection measures according to the staging. Further, the ecological value of the land (see biodiversity key issues below) would likely give rise to adverse impact in creating “No fuel Zones” and APZ's which extend beyond the outer kerb of the perimeter roads.

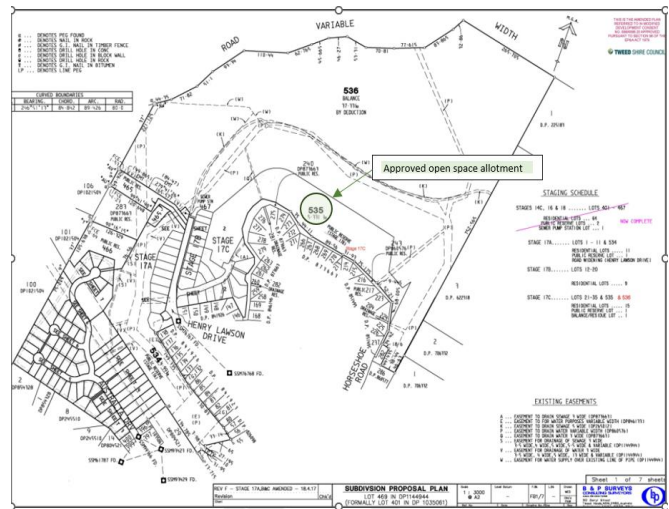
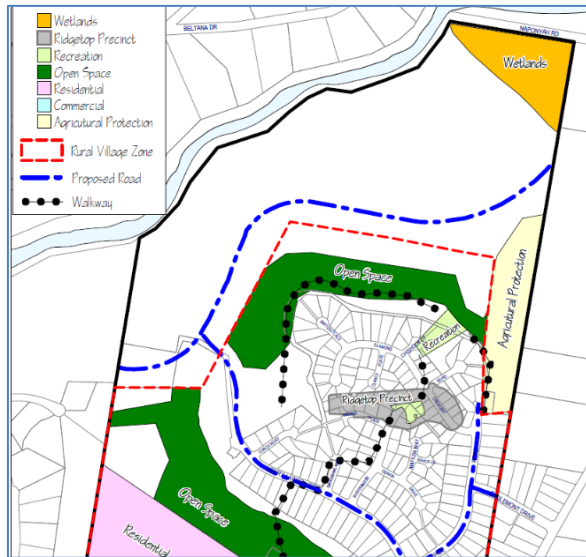
Tweed Shire Council has a policy which restricts fuel reduced area on Council owned or managed land (see *Asset Protection Zones on Public Land Version 1.4, Adopted by Council on 3 December 2020*). In the absence of the performance solution being accepted by Council and the consent authority, the development cannot achieve compliance with Condition 1 in the General Terms of Approval in the Bushfire Safety Authority issued by NSW RFS.

Finally, having regard to the lack of reticulated water supply, there is likely fire-fighting water supply limitations for the site which contradict the recommendations in the Bushfire Assessment Report.

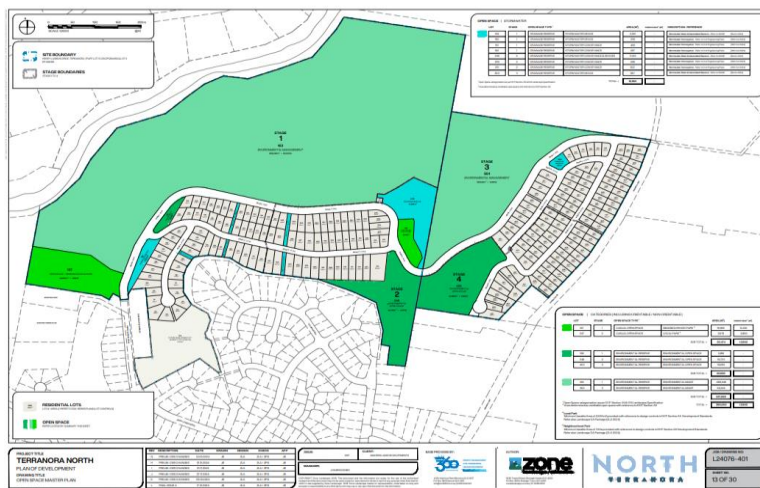
d) Relocation of Open Space per previous consent and Section B1 of TDCP2008

For the reasons outlined in this report, there is little merit to support the departure from Section B1 of Tweed DCP2008 in terms of the proposed relocation of Open Space per the approved location under S96/0066 and the desirable location pursuant to Section B1 of TDCP2008 (see extracts below):

Approved/ anticipated Open Space Location:



Proposed Open Space Location:



Whilst there is some merit to support the relocation to expand the existing structured open space to the western extent of the site, the higher order issues in relation to the proposed urban footprint and the impact on natural environment, variations to the DCP, lack of information (i.e. a comparative analysis study of open space alternatives having regard for the ecological values of the area currently identified as Open Space in the DCP B1 (to the south of the site) has not been provided, visual impacts having regard to the values of the site and surrounds have not been properly considered to determine the impact of the proposed urban footprint having regard to the existing consent and anticipated "Green Belt" per the Structure Plan in Section B1 TDCP2008.

Finally, given the history of the site, there is community expectation that the “green belt” of open space would run along the rear of the proposed residential lots previously approved under the historic consents. Council has received many submissions in this regard in which the consensus is that such should not be allowed based on previous court decisions.

A review of the court decision related to the jurisdictional considerations of the open space given the extent of modifications were being sought under a Section 4.55 modification. The decision did not go as far as dealing with the merit of the relocation and associated impact assessment.

Despite the above meritorious issues, the constraints in terms of sewer and water capacity iterate the position that an urban footprint extending into and beyond the planned open space “greenbelt” noting that Councils Wastewater Unit have advised that the majority of ET allocation for land on Lot 13 was based on the site being public reserve space per the previous consent on the land. The conversion of public reserve space to urban residential development produces an acceptable loading on the sewer network that has not been accounted for under the existing approvals and network capacity.

Based on the above considerations and the lack of information available, the consent authority cannot be satisfied that a variation to Section B1 of TDCP2008 is worthy of support.

e) Overdevelopment of the site

Having regard to the ecological impacts and the lack of required buffer distances from the wetland, lack of infrastructure to support the proposed residential lots, bushfire risks, landform constraints and the extent to which the proposed urban footprint exceeds the planned urban footprint under the site specific DCP that applies to the site (Section B1 Tweed DCP 2008), the proposal is considered to reflect an overdevelopment of the site causing adverse impact to the existing and future natural and built environment, thus not being in the public interest.

f) Substantial amount of information required to properly assess the subject DA:

- i. Acid Sulfate Soils** – There is insufficient information in the submitted "Acid Sulfate Soil Management Plan" (ASSMP) to demonstrate the proposed development fully complies with the relevant Planning Instruments, NSW Acid Sulfate Soils Assessment Guidelines (ASSMAC, 1998) and addresses site-specific conditions. Of particular relevance is that Appendix 1 references ELEMENT ASS2 for leachate monitoring details, but this section is absent from the report and it is unclear whether dewatering is proposed and if it is, it is expected that the ASSMP must cross reference any dewatering management plan.
- i. Hydrogeological/groundwater impacts** – Having regard to the above missing information, concerns are raised that Acid Sulfate Soil leachate will need to be managed via a Dewatering Management Plan which is not included in the DA. To this end it is noted that the discharge of such impacted water into the stormwater system would need to be addressed having regard to the legal point of discharge at the wetland.
- ii. Land owners consent** – Engineering Drawing referenced SK221, Section 6, depicts a future ground level going across an adjacent property (Lot 2 DP 622318) that is not part of the DA. This needs to be excluded from the plans or a notation provided to explain why it is shown and land owners consent provided.
- iii. Updated Stormwater Management Plans** - to address stormwater quantity, catchment details and stormwater quality in accordance with Councils Flooding and Stormwater Engineer comments (noting Councils Comments regarding upgrade works potentially encroaching the wetland);

iv. **BDAR** - Having regard for the Biodiversity Assessment Method 2020 (BAM) and provisions of the *Biodiversity Conservation Act 2016* (BC Act) and *Biodiversity Conservation Regulation 2017*, the submitted BDAR 2024 is considered deficient following critical review in the following areas:

- The BDAR 2024 has not been sent to Council as a Case Party in the Biodiversity Offsets and Agreement Management System to enable Council as the assessing authority to interrogate the data in the BAM-Calculator.
- Minimum information as listed in Appendix K of the BAM such as digital mapping shapefiles have not been made available to Council.
- Vegetation mapping has been provided at a scale that is difficult to analyse. The BAM 2020 at Part 4.1 recommends the following:
 - *a capture scale consistent with the site Map and the Location Map (recommended scale of 1:1000 or finer). Where the map scale exceeds 1:10,000, the site Map should be split into separate maps that capture the entire area*
- Vegetation mapping has been completed at a broad scale of 1:6000. Based on site inspection and aerial imagery interpretation, the vegetation mapping should be refined to capture and discern units of native vegetation either not currently mapped or incorrectly categorised.
- Anomalies exist in the assignment of Plant Community Types (PCT's) and omission of vegetation units in the mapping which may result in altered vegetation integrity scores, candidate species lists and ultimately final biodiversity credit calculations.
- Species polygons such as that for Southern Myotis appear to be incorrectly mapped based on habitat values.
- Riparian buffer distances to Important Wetlands in accordance with Table 14 Appendix E of the BAM 2020 have not been shown in the BDAR 2024 mapping.
- The assessment of Serious and Irreversible Impacts (SAII) entities such as *Rhodamnia rubescens* assumes that the specimen may be retained and afforded adequate protection. The engineering plans show the land to be filled where occupied by the *R. rubescens* specimen.
- The impacts of artificial light spill and impact on threatened entities has not been sufficiently considered.
- The BDAR 2024 has not comprehensively considered prescribed impacts such as non-native vegetation (Camphor Laurel) affording habitat to threatened species known to occur onsite such as Rose-crowned Fruit-dove.
- No alternative layouts have been shown in the BDAR 2024 to demonstrate how impacts are to be avoided under the current proposed layout. Limited information has been provided to explain or justify how or why such changes were made and on what basis as part of a constraints analysis.
- Long term management arrangements under development envelope control C10 requires all protected areas under DEC C9 to be managed in-perpetuity. The applicant has provided a Letter of Offer to dedicate land for environmental purposes however has failed to detail in-perpetuity management and funding arrangements for the proposed reserve land. The one-year establishment phase and four-year maintenance phase as detailed in the site Rehabilitation Plan dated December 2024 prepared by JWA Ecological Consultants does not reflect or provide for long term in-perpetuity management and is therefore unacceptable.

v. **Ecology**- Additional information in accordance with the NSW Department of Industry and Regional Development – Fisheries requirements;

vi. **Contamination** - Additional Information to satisfy Clause 4.6 of SEPP (Resilience and Hazard) 2021 in relation to contamination (see previous discussion) noting that a Remediation Action Plan may be forthcoming and thus triggering SSD in accordance with Clause 24 of Schedule 1 of SEPP (Planning Systems) 2021;

vii. Geotechnical Report – Additional information to properly assessment the suitability of the site in terms of geotechnical constraints. Furthermore, where recommendations are made in terms of future dwelling construction, it is considered unreasonable to burden future land owners with encumbrances that would have detrimental financial impact in terms of the costs to building a dwelling on future lots.

viii. Visual Impact Assessment – Additional information in the form of a Visual Impact Assessment is required to address Tweed Shire Councils Scenic Landscape Protection Policy and determine the extent in which a variation to Section B1 of TDCP2008 can be supported in terms of the location of open space and the proposed urban footprint in its location;

ix. Demarcation of Waterfront land – Additional information to address NSW DPE – Water requirements in terms of demarcation of waterfront land, which includes wetland and mapped watercourses, the designated vegetated riparian zones (VRZ) (which includes 40m VRZ for a wetland) and any encroachments and offsets as per the guidelines for controlled activity approvals.

x. Construction Noise Assessment and Management Plan – amended information to address Traffic Noise Impacts and Proactive Noise Monitoring.

Concerns are raised that the furnishing of the above requested information may give rise to ancillary works in the wetland, this would then trigger Designated Development pursuant to Clause 2.7 of SEPP (Resilience and Hazards) 2021.

g) 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 EPI's, issues raised in submissions having regard to the extent of information supplied, it is considered that the application cannot be supported.

It is considered that the key issues as outlined in Section 4 cannot be resolved without radical transformation to the development not limited to but including an entirely new servicing strategy for sewer and water. Furthermore, the road network has no capacity and the provision of development in accordance with any development controls that apply to the site, would need to occur after the delivery of Broadwater Parkway.

Finally, based on the required buffer distances from the mapped coastal wetland, coupled with the lack of infrastructure, the proposed footprint is considered to be an overdevelopment of the site and fails to satisfy the objects of the Act.

h) RECOMMENDATION

That the Development Application DA25/0011 for staged 217 lot residential subdivision, with conservation lot and associated civil works and vegetation removal, environmental facility, recreation areas and environmental protection works (NRPP) at Lot 13 DP 1264394; Henry Lawson Drive TERRANORA; Lot 3 DP 622318; No. 127-137 Mahers Lane TERRANORA be REFUSED pursuant to Section 4.16(1)(b) of the *Environmental Planning and Assessment Act 1979*. Reasons for refusal are appended to this report as Attachment A.

The following attachments are provided:

- Attachment A: Recommended reasons for Refusal
- Attachment B: Pre Lodgement meeting advice and DA assessment comments
- Attachment C: Submitted Engineering Drawings prepared by Civil 360 Engineering
- Attachment D: Submitted Plan of Development
- Attachment E: NSW Fisheries comments
- Attachment F: Water NSW comments
- Attachment G: Submitted Bushfire Risk Assessment Report
- Attachment H: Submitted Traffic Impact Assessment Report