

Planning Proposal Request

225 Terranora Road, Banora Point
Lot 16 DP 856265

Prepared for Wrenn Pty Ltd
By Planit Consulting Pty Ltd

February 2020



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Introduction and Context

i.i Brief

This planning proposal request relates to land at No. 225 Terranora Road, Banora Point (Lot 16 DP 856265).

Our submission seeks to demonstrate the appropriateness for this land to be rezoned for large lot residential purposes. Consequently, we are requesting Tweed Shire Council's support by pursuing a planning proposal over the site, which would seek to amend the zones and local planning provisions applying to the land, enabling consideration of future Development Application/s to facilitate this outcome.

This request has been prepared in accordance with the requirements of 'A guide to preparing planning proposals', Department of Planning and Environment, December 2018.

i.ii Background to this Planning Proposal Request

This land was the subject of a former planning proposal that was supported by Tweed Shire Council and issued with a Gateway determination (Reference No. PP_2017_TWEED_003_01).

The former planning proposal sought to rezone the same land subject to this new request and for the same purpose. The former planning proposal sought to apply a restriction over the site to limit the future subdivision of the property to a maximum of two (2) lots. This restriction was a requirement for Tweed Shire Council progressing the proposal and did not form part of the proponent's initial request.

The proponent's initial request sought to apply the same zone and development provisions to the site that are contained within this proposal and which apply to the adjoining large lot residential zoned lands within the immediate locale. While this initial request was submitted with concept plans for redeveloping the site, these plans were and remain concept. They were provided to inform both the community and various site-specific studies about the site's suitability for rezoning and possible development outcomes. The actual proposed development outcome for the site is not known and has not yet been fully investigated, as the current zones and provisions do not permit subdivision or residential development at the site.

The proponent in September 2017 withdrew their request for a planning proposal, due to concerns with the two (2) lot limitation. As a result, the Gateway determination was altered in December 2017 to confirm the proposal would not progress. The letter supporting this alteration to the Gateway determination indicates that both Council and the Department of Planning and Environment were aware that the proponent was still seeking a review of the zones and controls that apply to the site.

Since withdrawing this request eighteen months ago, the zones and provisions over the site remain deferred from the Tweed Local Environmental Plan (LEP) 2014, and the Tweed LEP 2000 provisions prohibit development of the site for rural residential purposes. We are aware that Council continues to advance their review of Deferred Matters land in light of NSW Department of Planning and Environments Northern Councils E Zone Review Final Recommendations and supporting Ministerial Direction.

The proponent in this regard is therefore again seeking to pursue a site-specific rezoning request for this land, but one which does not apply a limitation on lot yields.

This report has been prepared to update the proponent's previous request, to address the current strategic framework and other commentary about the site and to redemonstrate merit for the proposed rezoning progressing. The information contained in and attached to this request has been prepared over the many years that this land has been investigated and remain relevant for justifying the current request. Rezoning and updating the controls would provide greater certainty for the landowners to invest more into detailed design investigations for redeveloping this site.

i.ii Property Description & Surrounding Land

The site is 10.04 hectares in area, is located adjacent to the existing residential area of Banora Point and approximately 3.5 kilometres south-west of the Tweed Heads South commercial centre. The site fronts Terranora Road and large lot residential land to the north, north east and north west, Old Ferry Road and the Tweed River to the south and a vegetated escarpment to the east and west.

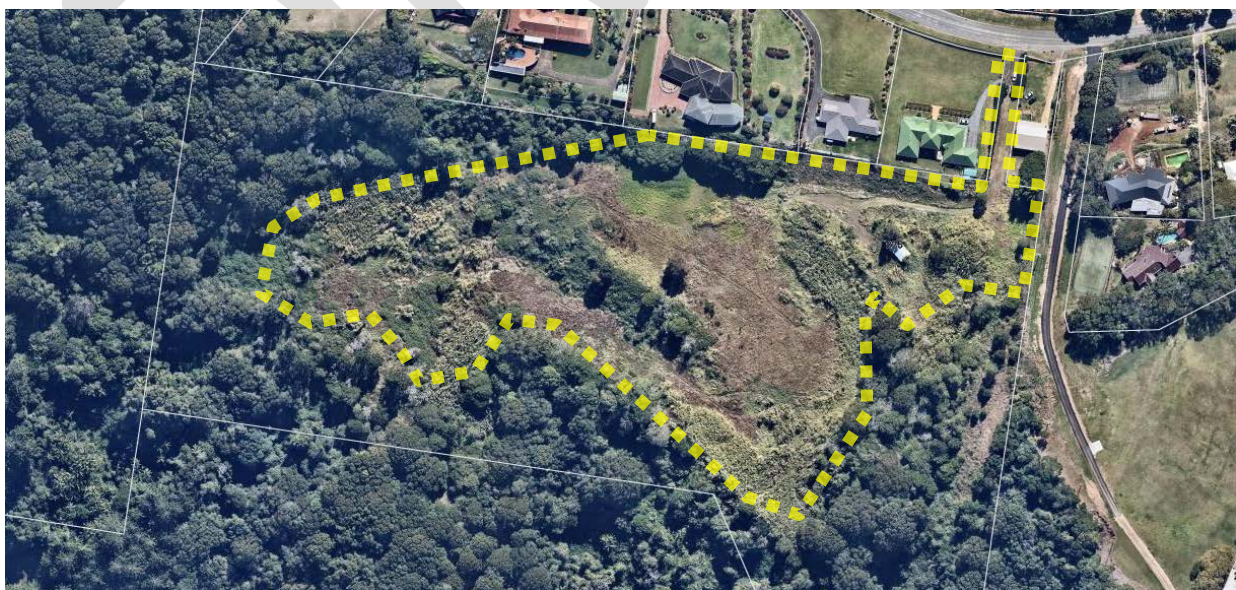
The site is predominantly vacant with only a rural shed located on the land. The northern portion of the site comprises cleared grassland and this rural shed. The cleared portion of the site is approximately 3.6 hectares in area and was previously used as a hard rock quarry. It is this part of the site which is subject to this planning proposal request.

The land is undulating, with a general north-east to south-east slope ranging from 10° – 30° with some isolated steeper sections. Dense vegetation covers steeper / hill face land and does not form part of the proposed rezoning footprint.

A 10-metre-wide lot handle links with Terranora Road and provides vehicle access to the site and the existing shed.



No. 225 Terranora Road is identified in red. The indicative land area subject to this request is marked in yellow



The indicative area that is subject to this rezoning request is marked in yellow

i.iii Mapped Site Characteristics

Flood Prone Land

The southern parts of the site, adjoining Old Ferry Road and the Tweed River, are identified to be within Council's Flood Planning Area. This area is disconnected from the northern portion of the site due to slope and existing vegetation.

Any future dwelling site or vehicular access would be established in the northern part of the site, outside of any flood affected area. Flooding is not a key constraint for the proposal.



Acid Sulfate Soils

The majority of the site is mapped as potentially containing Class 5 Acid Sulfate Soils (yellow). The southern portions of the site adjoining the Tweed River are mapped as Class 2 Acid Sulfate Soils (pink).

Acid Sulfate Soils are not a significant constraint for the site. Any future dwelling or works onsite would be contained within land mapped as potentially Class 5 Acid Sulfate Soils.



Bushfire

The densely vegetated areas onsite are mapped as Category 1 bushfire prone land. A small portion of Category 2 bushfire prone land associated with some scattered mature vegetation in the centre of the site has also been mapped. The remaining portion of the site is mapped predominantly within a bushfire prone buffer.

Referral of the planning proposal to the NSW RFS Commissioner will be required as part of the Gateway determination requirements.

A Bushfire Safety Authority Report has been prepared. It considers one concept design outcome for the site and confirms that subdivision and dwellings onsite can be consistent with the guidelines under *Planning for Bushfire Protection 2006*.



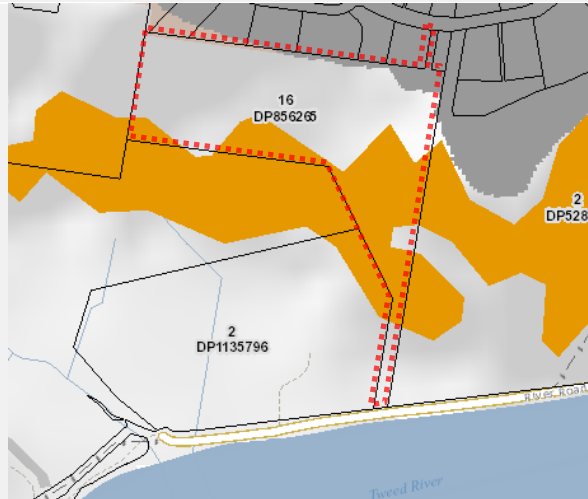
Biodiversity

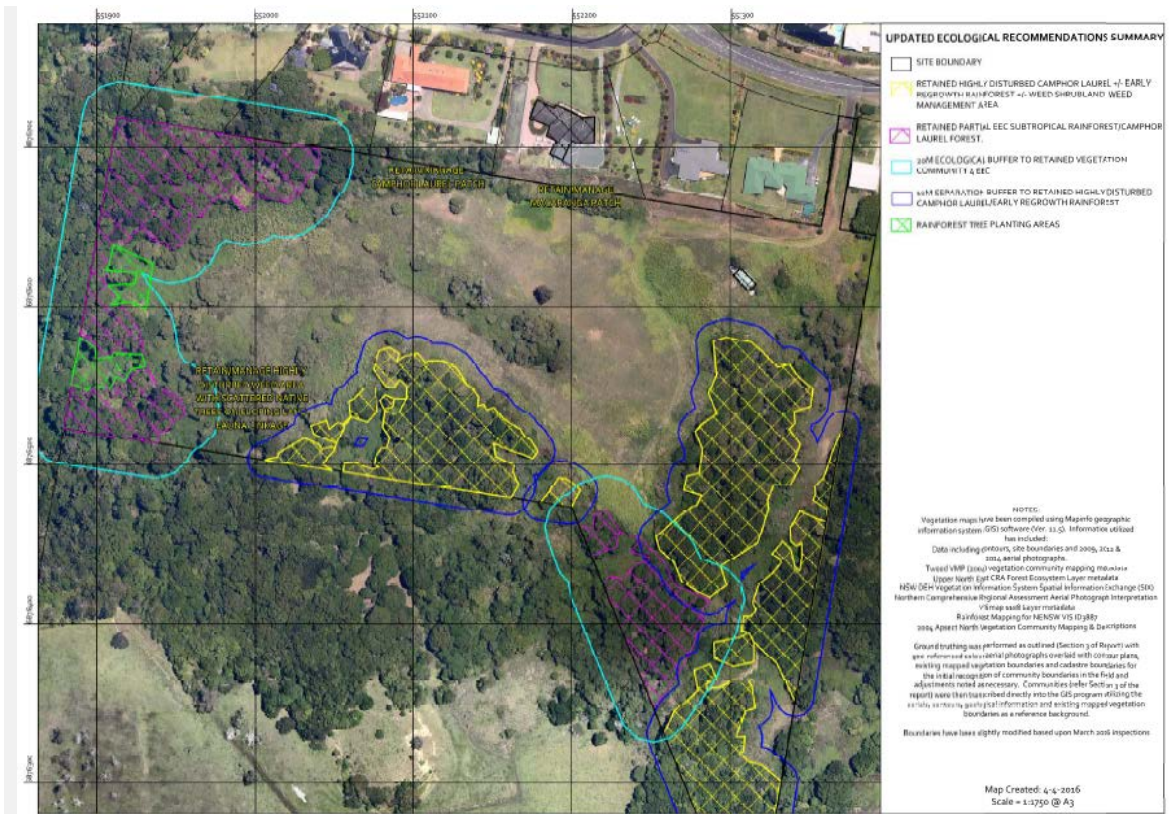
Detailed flora and fauna assessments have been undertaken across the land, considering the existing vegetation and drainage areas on and around the site.

These studies have identified residential development within the cleared portion of the site is suitable when considering potential ecological impacts.

These studies confirm there is ability for development buffers to be established onsite to ensure any potential for impact on threatened flora and fauna species or their habitat and corridors is minimised.

It is noted that these studies predate the *Biodiversity Conservation Act 2016* and its associated regulations and that part of the vegetated land on this site is mapped as High Biodiversity Value as defined by the *Biodiversity Conservation Regulation 2017*. This mapped high vegetation area is outside of the proposed rezoning footprint.

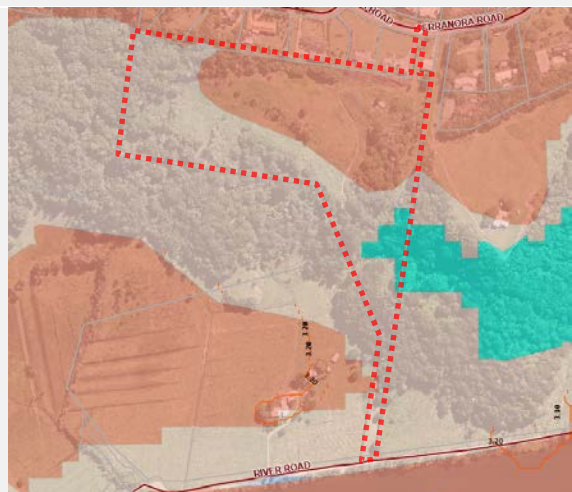




Groundwater Vulnerability

The site is mapped as containing high (identified in dark pink), moderately high (light pink) and moderate (aqua) areas of groundwater vulnerability.

Groundwater is not considered a significant constraint for the land given the large lot residential land use objectives. Likewise, appropriate setback distances, and or selective earthworks, can be undertaken where required to minimise potential impact on groundwater.



Agricultural Suitability

The site is mapped as having minimal agricultural value, as identified within the Agricultural Land Suitability Mapping, obtained from Council's website. As displayed, the site is mapped as unsuitable land for agriculture (identified in green) and urban land (pink).

The land is not mapped as State or regionally significant farmland.



Coastal Zone

The site is partially located within the Coastal Zone and adjoins land mapped as State significant coastal wetland. Most of the land proposed to be rezoned sits outside of this coastal zone and at a significant height and distance from the coastal wetland. Accordingly, coastal zone features or wetlands are not considered to be a significant impediments to the specific land area.



Aboriginal

The land is mapped under Council's Aboriginal Cultural Heritage Management Plan 2018 as containing 'predictive' (blue) and 'known' (yellow) areas of Aboriginal Cultural Heritage. The land area mapped in yellow comprises a mapped Aboriginal Place of Heritage Significance.

The land subject to this rezoning request is limited to the areas of the site with 'predictive' Aboriginal Cultural Heritage.

The 'predictive' mapping has been applied as the land is located along a ridgeline / escarpment area. Council's Strategy notes that this type of land form was a preferred land type for former Aboriginal passage and observation.

Given the land has historically been cleared and quarried, the potential for this land containing Aboriginal Cultural Heritage items is considered to be low.



i.iv Development and Rezoning History

Option	Comments
1960's – 1980's	<p>Hard rock quarry operations were undertaken over the land proposed to be rezoned.</p> <p>The rural residential development which adjoins the land to the immediate north, was approved in 1985, while the quarry was still operating and prior to trunk water and sewer services being provided in the area.</p> <p>Quarry operations have ceased, and the local area has been serviced with trunk infrastructure.</p>
1999	<p>A proposal to subdivide the land into two allotments was prepared. This application relied on a variation to the minimum lot size planning controls at the time being supported.</p> <p>This proposal was not supported by the then Department of Urban Affairs and Planning (DUAP), which considered that insufficient evidence was provided to support a relaxation in planning controls. Though the determination noted that the merits for changing the controls that apply to the site should be considered through a rezoning process. This is exactly what this planning proposal request is seeking to do.</p> <p>The information contained in and attached to this request demonstrate the merits for reviewing and updating the planning controls over the site. This would allow a Development Application for residential subdivision to be considered, without relying on variations to planning controls being issued.</p>
2000 - 2002	<p>A revised subdivision design for the proposed two lot subdivision was prepared and was supported by DUAP. DUAP included a restriction that a dwelling should not be erected on the larger / remnant block.</p> <p>Consent was issued for this subdivision, as was a separate consent to erect a dwelling on the residue block – despite the advice from DUAP. The consents did provide for the connection of these new sites to town reticulated sewer, though the subdivision did not proceed.</p>
2002	<p>Requests to rezone the land to permit residential development commenced. In 2002 an initial rezoning request was made and was associated with a potential 12 lot community title subdivision. This request did not progress beyond the initial request being submitted to Council.</p>
2004	<p>A request for rezoning the land was again submitted, this time associated with a proposed 30 lot community title development. It appears as though no action was taken in relation that request.</p>

2010	A request to build a dwelling on the site was submitted to Council, though this was not actioned.
2010	<p>As part of the preparation of its Standard Instrument LEP, Tweed Shire Council identified the land subject to this planning proposal request to be suited for an alternative zoning. Informed by shirewide strategic studies, Council's draft LEP 2010 acknowledged that this land was not environmentally constrained and rather, formed part of the existing rural/rural residential landscape character of the area. A RU2 Rural Landscape Zone was applied to the site under the exhibited Draft Tweed Standard Instrument LEP.</p> <p>The RU2 zone did not permit large lot residential subdivision on the land. In this case and prior to the adoption of the Tweed LEP 2014, a planning proposal request was submitted to Council to allow this use on the site.</p> <p>This former planning proposal request was made to Tweed Shire Council in 2010 and was supported by site specialist studies/reports, including:</p> <ul style="list-style-type: none"> • Flora and Fauna Assessment • Visual Impact Assessment Report • Bushfire Threat Assessment; and • Engineering Report <p>These reports confirmed that the land proposed to be rezoned did not encompass any significant environmental attributes that would preclude residential development. They also confirmed that the land was not suited to agricultural activities due to the site's size, fragmentation, surrounding land use and topography of the land.</p> <p>Tweed Shire Council had resolved to support this planning proposal request in 2010. There was also consultation undertaken with representatives from the Department of Planning and Environment, who had indicated 'in principle' support for the planning proposal to progress. A planning proposal was never formally prepared/adopted by Council however. This was due to Council's adopted works program at the time, which advocated that only five rezoning proposals could be processed per year and that this quotient had already been met. Since 2010 there has been no advancement of this planning proposal request.</p>
2015 - 2017	<p>A request to rezone the site in association with a nine (9) lot community title subdivision was submitted to Council.</p> <p>Documentation was submitted to Council during its consideration of this request that the land could support up to sixteen (16) allotments if the land was connected to town reticulated services; however, Council determined that only two (2) allotments could be permitted at the site. Council officers recommended that limiting the</p>

	<p>development to two (2) lots reflects an actual constraint of the land when viewed against the visual landscape importance of the Terranora escarpment. That is, a maximum lot yield was established for the site based off an interpretation of what would be a suitable outcome from a visual perspective. It is our view that this outcome was not supported by any technical reporting or plans to demonstrate that this was the maximum yield possible for the land. Rather, it is contended that visual impacts at the site are not likely to be significant due to the visibility of the land and former quarrying activities / terracing at the site. Residential development at this site would be consistent with the existing scenic landscape along the Terranora escarpment and less prominent than previously approved and existing residential development along the Terranora ridgeline.</p> <p>A Gateway determination was issued for this planning proposal, recognising that there is merit for the controls over the land to be updated.</p> <p>The rezoning request was later withdrawn by the landowner due to concerns with the restriction of limiting the site to two (2) allotments – when such a limitation did not apply to other R5 zoned land in the area.</p>
2019	<p>A new request for a planning proposal was prepared for the site, with an intended outcome of enabling large lot residential development over part of the site, being the 3.6 hectares of cleared land in the site's north.</p> <p>The request was submitted to Council however was formally declined by Council on 1 August 2019.</p> <p>Within its determination Council raised concerns relating to potential for significant scenic impact, essential services (water and wastewater), potential for contamination, geotechnical suitability, and compliance action.</p> <p>This 2020 request for planning proposal has provided additional information and/or strategies to resolve these issues.</p>

The Planning Proposal Request

Part 1 - Objectives and Intended Outcomes

This planning proposal request relates to land known as 225 Terranora Road, Terranora or Lot 16 DP 856265.

The site is split zoned under various local planning instruments. It is partly zoned R5 Large Lot Residential and part RU2 Rural Landscape under the *Tweed Local Environmental Plan (LEP) 2014* and partly zoned 7(d) Environmental Protection (Scenic/Escarpment), part 1(a) Rural and part 1(c) Rural Living under the Tweed LEP 2000. The land subject to this rezoning request is zoned 7(d) Environmental Protection under the Tweed LEP 2000. The ability to create lots less than 40 hectares is prohibited in the 7(d) Zone.

The planning proposal aims to enable large lot residential development over part of the site, being the 3.6 hectares of cleared land in the site's north. This rezoning would allow a Development Application to be considered for redeveloping this land for large lot residential purposes. Any residue lot created by the subdivision would comprise all of the land still zoned for rural or environmental protection purposes, being the land, which does have ecological significance. Rehabilitation and ongoing management of this ecologically significant land would be encouraged through the subdivision.

To achieving this aim, it is proposed to include this 3.6 hectare part of the site into the Tweed LEP 2014 and apply the same land use zone and development standard provisions to it that apply to the adjoining large lot residential zoned land. This would include amending the Land Application Map, Acid Sulfate Soils Map, Floor Space Ratio Map, Height of Buildings Map, Lot Size Map and Land Zoning Map.

To this end, the objectives of the planning proposal are:

- To review the zones and development controls that apply to the site;
- To facilitate large lot residential development over part of the site;
- To contribute to the protection and rehabilitation of other parts on the land that have ecological and visual significance; and
- Contribute to local housing supply and diversity in the Banora Point / Terranora locality in a manner sympathetic to the site conditions, similar to contemporary proposals such as the Vista development on McAuleys Road.

The intended outcome is to achieve a LEP Amendment that incorporates appropriate land use zones, provisions and associated maps for the site that are consistent with the objectives of this proposal.

Intended Development Outcome

Various concept subdivision layouts have been prepared over the site to indicate possibilities for the land's redevelopment and to inform site-specific studies and consultation with the community and government agencies.

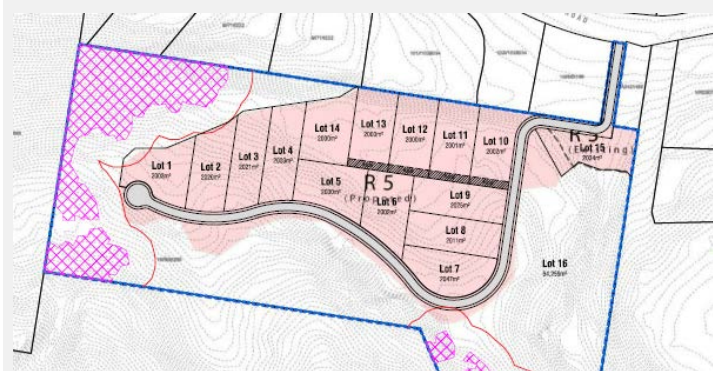
These concepts have ranged from a sixteen (16) allotment subdivision, a thirteen (13) allotment subdivision, various nine (9) allotment subdivision layouts. Concept layouts for a two (2) and three (3) lot subdivision have also been prepared.

Under each of these scenarios, the residue land has been shown to be retained within one allotment. This land could be managed by one land holding or under a community title arrangement. This will ensure the land, which will remain zoned for environmental and rural purposes, will not be fragmented and protected and managed in perpetuity.

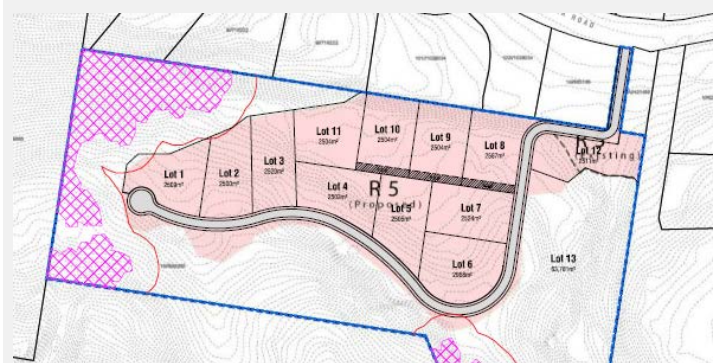
This subject planning proposal request has not been submitted with a preferred layout. This is because this request is seeking that the review of the zones and controls applying to the site be considered on merit and not an assessment of development outcomes. This request has been written to confirm the suitability for applying these zones without additional land or lot yield restrictions. The reasons for this are discussed throughout this report.

Various Subdivision Concepts

Sixteen Lot Subdivision



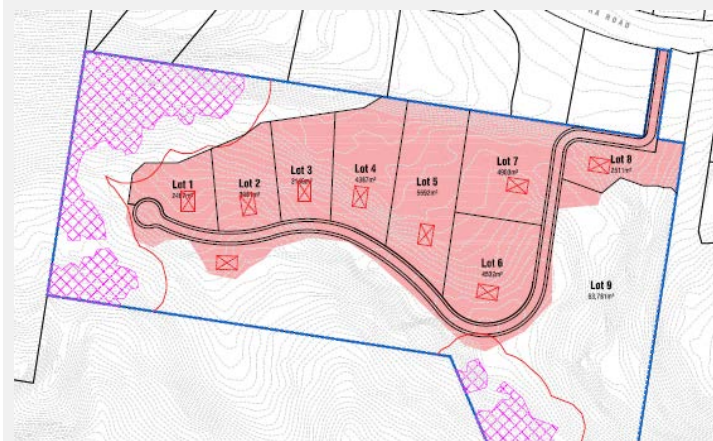
Thirteen Lot Subdivision



Nine Lot Subdivision



Alternative Nine Lot Subdivision



Three Lot Subdivision



Two Lot Subdivision



Part 2 - Explanation of Provisions

Only LEP map amendments are required to facilitate the intended outcomes of the planning proposal request. That is, there is no requirement to amend written provisions under the Tweed LEP 2014.

In short, the following Tweed LEP 2014 Map Amendments would be required to achieve the intent of the proposal:

- Include the land into Tweed LEP 2014 by amending the Land Application Map - Sheet LAP_001
- Applying a R5 Large Lot Residential Zone to the subject land, by amending the Land Zoning Map - ZN_022
- Applying a 1 hectare (and clause 4.2A(2) overlay) minimum lot size provision to the part of the site be zoned R5, by amending the Lot Size Map - LSZ_022
- Applying a 9m building height limit to the part of the site being zoned R5 by amending the Height of Buildings Map - HOB_022
- If desired, applying a 0.55:1 maximum floor space ratio to the land being zoned R5, by amending the Floor Space Ratio Map - FSR_022
- Applying a Class 5 acid sulfate soils classification to the land being zoned R5, by amending the Acid Sulfate Soils Map - ASS_022

The provisions of the Tweed LEP 2000 would no longer apply to this part of the site once it is included under the Tweed LEP 2014.

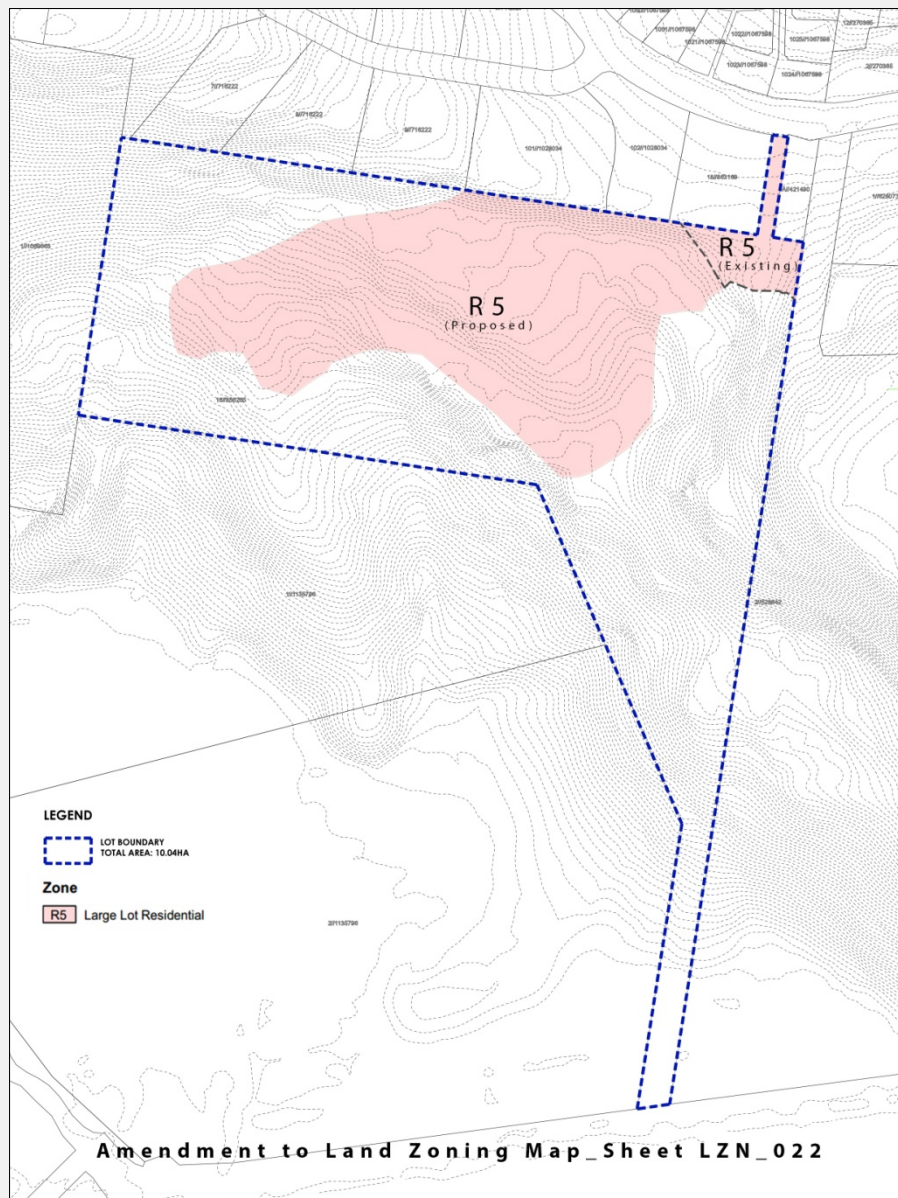
Further detail regarding the proposed amendments is outlined below.

Land Zoning

It is proposed to rezone part of the site currently zoned part 7(d) Environmental Protection (Scenic/Escarpment) and 1(c) Rural Living under the Tweed LEP 2000 to R5 Large Lot Residential under the Tweed LEP 2014.

The land to be rezoned would be limited to the already cleared parts of the site and will provide large lot residential development opportunity, consistent with the surrounding rural residential and residential character. Approximately 3.6 hectares of land is proposed to be rezoned. This rezoning footprint has been determined by the extent of former quarrying activities which has resulted in cleared, terraced and developable land at the site. Limiting the zoning footprint to this area is consistent with the criteria for zoning land under the 'Northern Councils E Zone Review: Final Recommendations'. Further justification for this proposed rezoning is provided under Part 3 of this planning proposal request.

The application of the new zone is shown in the figure below.



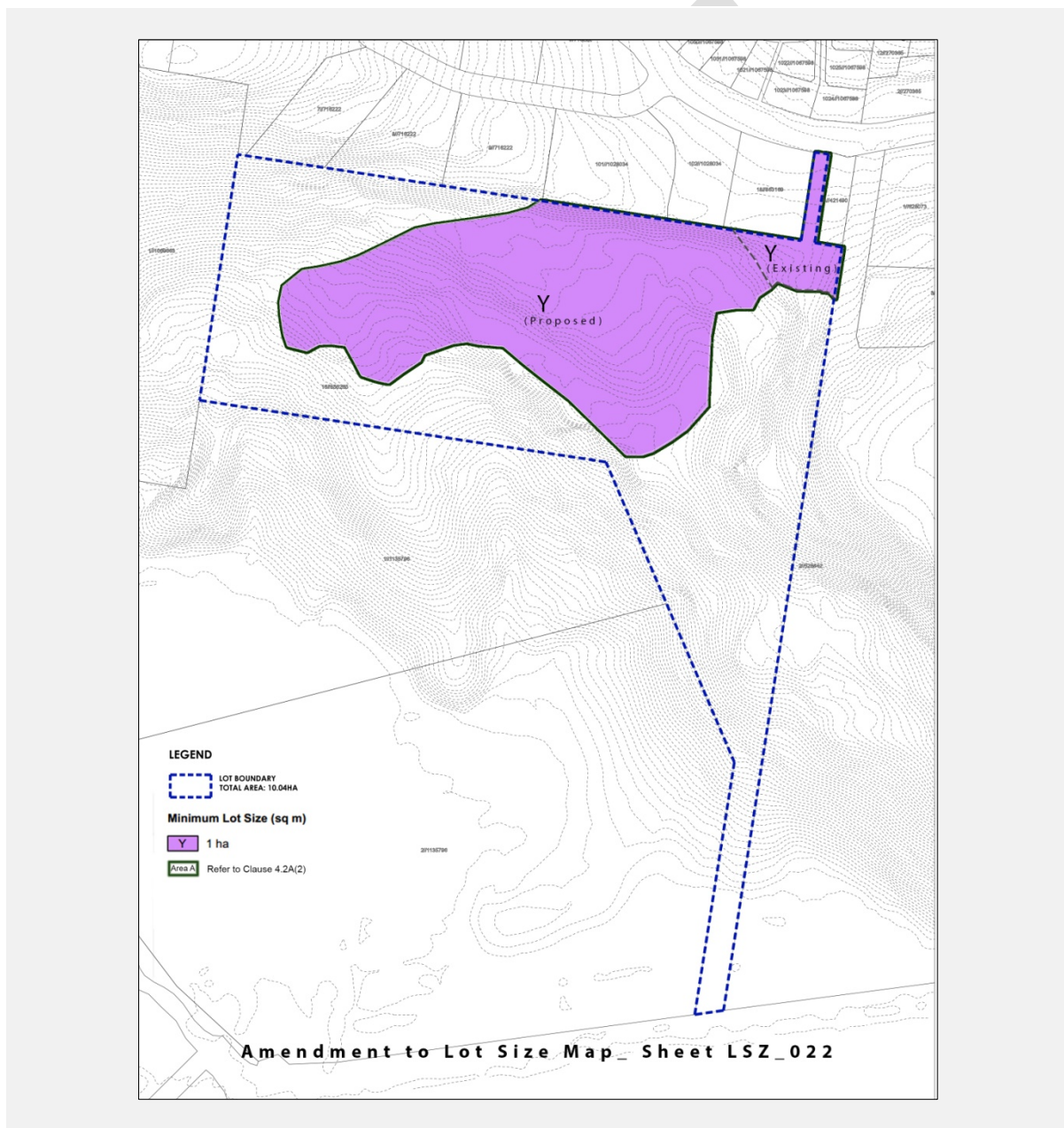
Minimum Lot Size

Minimum lot sizes that permit large lot residential subdivision across the site need to be adopted. A minimum lot size of 1 hectare is proposed. The site will also be subject to the provision of Clause 4.2A, allowing minimum lot sizes of 4,000m² where the land is connected to reticulated services.

The proposed minimum lot size and application of Clause 4.2A is equivalent to the existing minimum lot size requirement for the adjoining large lot residential zoned land to the north, east and west.

The proposed minimum lot size for the site is compatible with the site attributes and surrounding locality character.

The application of the new minimum lot size for the site is shown in the figure below.

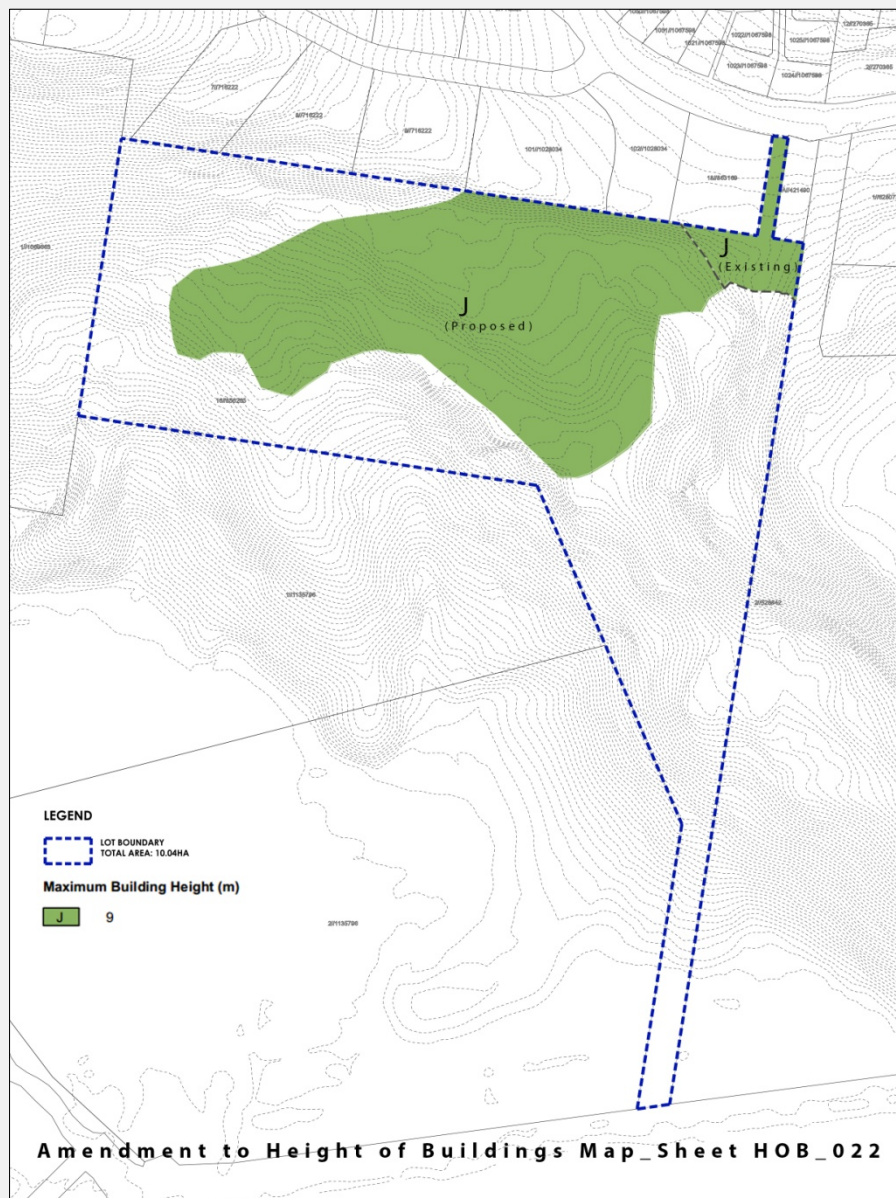


Building Heights

A maximum building height of 9 metres is proposed for the site.

The proposed building height will provide flexibility in the design and form of urban development across the site, is compatible with the site attributes, surrounding residential character and suitably integrates with the site's scenic values. A 9 metre maximum building height provision is equivalent to the existing maximum building height requirements for the adjoining large lot residential land to the north, east and west.

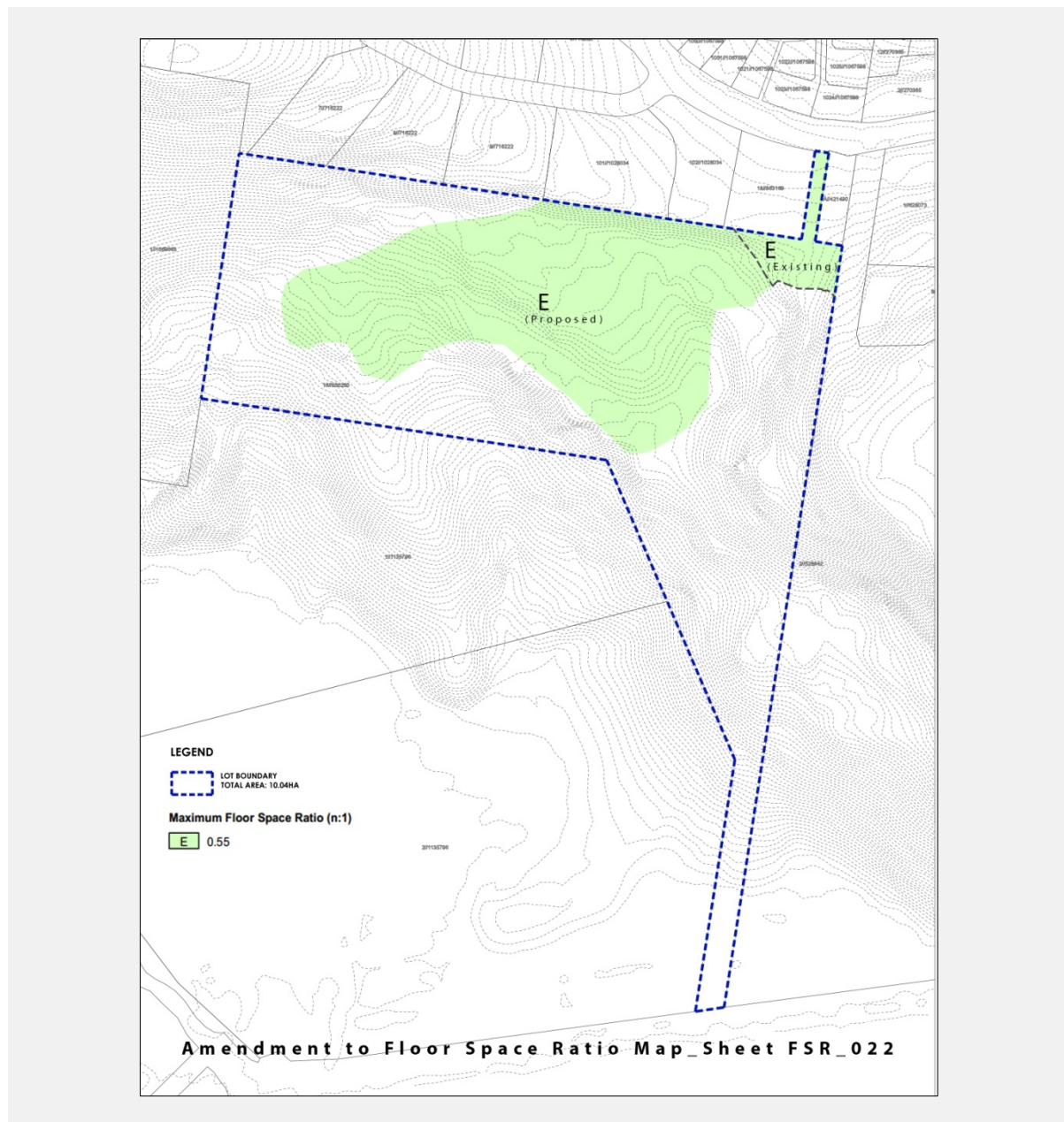
The application of the new maximum building height for the site is shown in the figure below.



Floor Space Ratio Map

Whilst floor space ratio provisions are often redundant within large lot residential environment's, no objection is raised to the imposition of a maximum floor space ratio of 0.55:1 for the site. This outcome reflects Council's wider application of the development standard for the adjoining large lot residential land to the north, east and west.

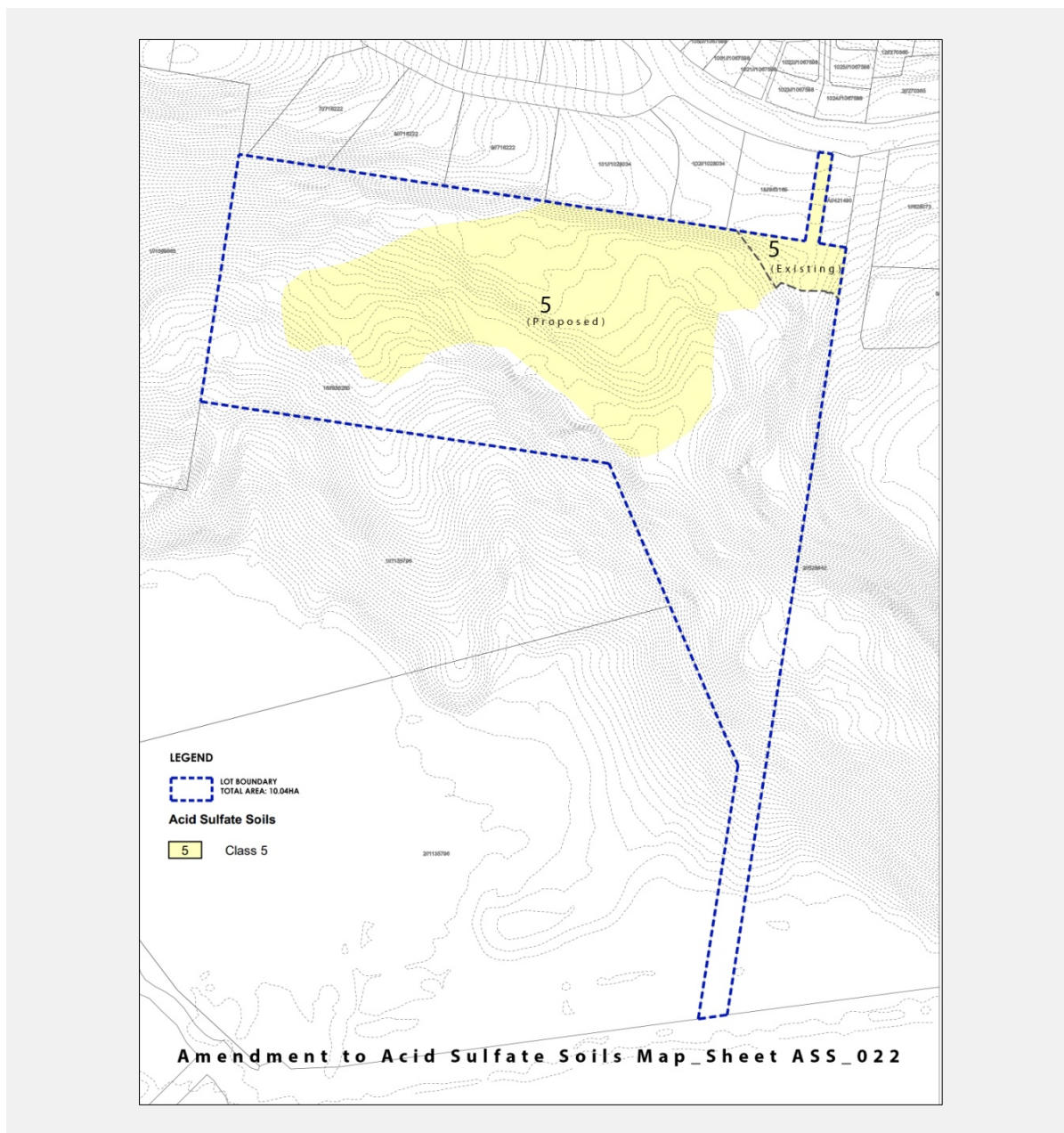
If desired, the application of the new maximum floor space ratio for the site is shown in the figure below.



Acid Sulfate Soils

There is a requirement to amend the Acid Sulfate Soils map under the Tweed LEP 2014 to include the subject site. The part of the site which is subject to this proposal is mapped as potentially containing Class 5 Acid Sulfate Soils. This is consistent with the current Acid Sulfate Soils mapping provided on Tweed Shire Council's GIS and also what was identified for the site under the Draft Tweed LEP 2012.

The proposed Acid Sulfate Soils mapping for the site is shown in the figure below.



Part 3 – Justification

Section A - Need for Planning Proposal

Q1 - Is the planning proposal a result of any strategic study or report?

The request is seeking a review of the planning controls applying to the site in part as a result of a strategic study, being the Final Recommendations under the Northern Councils E Zone Review (E Zone Review). At present the subject site is not contained under a Standard Instrument LEP, being the Tweed Local Environmental Plan 2014, and whilst it is our understanding that Council is pursuing investigations to resolve Deferred Matters lands throughout the shire, no information is currently in the public domain as to project findings or timelines.

As the E Zone Review related purely to a suitable methodology for zoning of land for environmental purposes, this proposal, is not a direct result of this strategic report. Notwithstanding, when applying the E Zone Review criteria, the land subject to this proposal does not meet the requirements of an environmental zone. A review of the proposal against the Final recommendations is provided under **Attachment 3**. Likewise, this request has been prepared demonstrating that a review into changing the controls has merit and that rural residential development of the land is a suitable development outcome for the site and area. It is an update to a former planning proposal which did receive a Gateway determination to proceed in 2016.

While this land is not identified for release under any local or Regional strategic study or report, this proposal and the previous Gateway determination does confirm the merit for the controls over the land being reviewed.

Q2 - Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

The proposal seeks to apply a land use zone and principal development standards under the Tweed LEP 2014 that would facilitate and control large lot residential development at the site. This zoning approach is consistent with other rural residential and cleared land along the Terranora / Banora Point escarpment.

Other mechanisms such as Schedule 1 or DCP provisions are not considered appropriate means for achieving the objectives and intended outcomes of this planning proposal request. These are summarized below.

The proposed LEP amendments are the most appropriate method to achieve the intended outcomes.

Option	Comments
Applying an additional permitted use clause or limiting clause.	This approach is not considered appropriate, primarily as analysis of the land has identified that an alternative, non-environmental, zone is appropriate. Pursuing additional permitted uses are also traditionally undertaken when a specific design outcome has been identified. In this instance, the development yield for the land is not yet known as detailed site-specific studies and DA merit assessment has not yet been undertaken. For these reasons apply an additional permitted use is not considered appropriate.
Applying an alternative residential zone or development standards that would permit or limit residential development.	This approach is considered to be inconsistent with Council's broader strategic application of zoning residential and cleared land along the Terranora / Banora Point escarpment. Could encourage unintended development also permitted under the zone.
Applying LEP 2014 zones and controls to the whole site	The land does contain portions of significant vegetation. Council is yet to adopt the E2 and E3 zones and therefore applying these zones to part of the site would require a wider strategic review. Could encourage unintended development in other areas of the site.
DCP Provisions.	Does not resolve permissibility Has not been considered necessary for other R5 zoned land in the area and notably the adjoining lot being 221 Terranora Road, which has recently been subdivided for residential purposes. The studies submitted under this planning proposal request indicate that the land can be developed for urban purposes with no detrimental impact on infrastructure, services and environmental values. The studies also confirm that potential hazard risks such as slip and bushfire can be managed through onsite design responses. Given these findings, and the existing LEP, DCP and bushfire protection provisions, preparing a site specific DCP would seem unnecessary in the case. DCP provisions for this site would add no value above what is already

needed to be considered and addressed under a development Application to confirm it achieves the requirements under Section 4.55 of the *Environmental Planning and Assessment Act 1979*.

These alternative options are not considered the best approach for achieving the intended outcomes of this request. Rather, the proposed approach discussed under **Part 2** of this Planning Proposal Request is the best way for achieving them.

DRAFT

Section B - Relationship to strategic planning framework

Q3 - Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub – regional strategy (including exhibited draft strategies)?

North Coast Regional Plan 2036

The focus goals under the Regional Plan which are directly applicable to this planning proposal request are:

- Goal 1: The most stunning environment in NSW;
- Goal 2: A thriving, interconnected economy;
- Goal 3: Vibrant and engaged communities; and
- Goal 4: Great housing choice and lifestyle options.

Goal 1. The most stunning environment in NSW

The Regional Plan lists important planning principles to ensure the protection and improvement of the Region's highly valued environment. It recognises that most urban settlements on the North Coast are separated by 'green breaks', giving the Region a distinctive character.

Principle 1: Direct Growth to Identified Urban Growth Areas seeks to protect these 'green breaks' and enable efficient infrastructure and service delivery and use by directing growth to mapped growth areas.

The Regional Plan does provide some flexibility, to allow variations to these mapped growth boundaries where they meet strict *Urban Growth Area Variation Principles* and considered through a rezoning process.

This land has not been excluded from a growth area as an anomaly. It is acknowledged that the growth area aligns with the existing zoned land for Banora Point. Our submission does seek to demonstrate however that a R5 zone over the cleared portion of the site is suitable as it:

- would not impact on workable important agricultural land
- would not significantly reduce green breaks and character in the area
- would contribute to revegetation at the site
- can be suitably serviced without burdening existing infrastructure
- would be responding to a housing and demographic need for the area

The proposal is consistent with the Urban Growth Area Variation Principles as outlined under **Attachment 2** of this report and achieves the intent of Goal 1 under the Regional Plan.

In addition, the landowner has expressed a desire to leverage the rezoning of land to facilitate rehabilitation works to the site, both through the large lot residential footprint, as well as the ecological areas surrounding. Ultimately, future development of the site is considered to possess opportunity to contribute to the sites environmental qualities through rehabilitation, improvements and active site management.

Goal 2. A thriving, interconnected economy

Residential development on this underutilised land would create new housing opportunity while not impacting on wider agricultural or economic practices or infrastructure services.

The proposal is consistent with Goal 2.

Goal 3: Vibrant and engaged communities

Goal 3 acknowledges the Region's identity as being shaped by its culture, environment and communities and seeks to ensure growth in the Region respects and builds upon and around this legacy.

Actions under Direction 18 indicate that Aboriginal cultural heritage assessments are to be undertaken to ensure impacts to Aboriginal cultural heritage are minimised and appropriate heritage management mechanisms are identified.

The land has historically been cleared, quarried and is surrounded by urban development and infrastructure. The likelihood of the site containing significant aboriginal items is considered to be low. Measures to protect cultural significance can be determined under any future DA that seeks to undertake works onsite. Alternatively, further detailed investigation could be undertaken as part of this planning proposal process to determine the significance of the land and if further site-specific provisions or development controls are required to manage it.

Direction 21 seeks to ensure the cost-effective and efficient use of infrastructure by directing development towards existing infrastructure. The site immediately adjoins residential land.

Preliminary engineering assessments have been undertaken to confirm that the land can be serviced by all necessary utility infrastructure and roadways, at no additional cost to Council or the State government.

The proposal is consistent with Goal 3.

Goal 4: Great Housing Choice and Lifestyle Options

Goal 4 recognises that household sizes and make up are changing and that different approaches to housing delivery is required on the North Coast.

While not within a mapped settlement or urban growth area, this planning proposal request seeks to demonstrate that the site is suitable for a large lot residential zone. Future development of the site would be contiguous to the existing growth area of Banora Point. The design and final development outcome at the site would be guided by the LEP and DCP controls.

The site's rezoning would create new housing opportunity in the area, to assist with meeting the needs of the community and consistency with the directions and actions under Goal 4.

Direction 24 seeks to ensure that new rural residential housing will not be permitted in the coastal strip, unless the land is already zoned for this purpose, or is identified in a Department endorsed current or future local growth management strategy. Actions 24.1 and 24.2 reiterate this notion stating that rural residential housing should be well planned, limited to identified release areas, consistent with the Settlement Planning Guidelines and promote sustainable use of the region's sensitive coastal strip.

Tweed Council does not have a rural residential release strategy. This inconsistency with the Direction and Actions was considered to be justified by the Department of Planning and Environment when it previously issued a Gateway determination for the site to allow a proposed R5 zone to be considered over the land. The following points were made under the Department's 'Planning Team Report, dated 8/5/17.'

1. The site is largely unconstrained by flooding and acid sulfate soils. It is expected that bushfire and geotechnical instability risk can be mitigated at development application stage and adequate evacuation routes to non-bushfire prone land exist. The potential visual impact of the future development of the land can be further addressed at development application stage;
2. The existing 7(d) zoned land will provide an appropriate buffer between the proposed R5 zone and the future development and the surrounding natural landscape features; and
3. The proposed rural residential development is located adjoining existing rural residential land and is close to the local centre of Banora Point and the larger centre of Tweed Heads. The land is not identified for future urban expansion meaning the proposal will not prevent the land from being developed for an identified higher purpose.

The planning proposal request remains consistent with this former determination. While the current request seeks to remove the requirement for limiting the site to two (2) allotments, it is contended that the existing controls under the LEP and DCP would ensure that a suitable

development outcome over the land can be achieved, without detrimentally impacting natural resources or scenic qualities.

The current request also contains an assessment against the Urban Growth Area Variation Principles to justify the proposed expansion to the existing growth boundary.

Local Government Narratives – Tweed

The Regional Plan recognises that Tweed needs to support ongoing growth through housing and job supply.

The site's rezoning and redevelopment would create new housing opportunity in the area. This is discussed in more detail under **Part 3** of this Planning Proposal Request.

The proposal is seen as consistent with the Regional Plan, achieving consistency with the majority of the directions and actions, and where inconsistencies have been identified, supporting justification is available. This is consistent with the Department of Planning and Environment's Gateway determination dated 8 August 2017 and the supporting Planning Team Report, dated 8/5/2017.

Strategic & Site-Specific Merit Assessment Criteria

The Department's *A guide to preparing planning proposals* contains assessment criteria to assist proponents or a PPA justify a planning proposal. While the North Coast Regional Plan does contain Sustainability Criteria / Variation Criteria, an assessment of the Strategic and Site-Specific Merit Test under this guiding document has been undertaken to confirm the suitability of the proposed rezoning.

This assessment is contained under **Attachment 1** of this report.

Q4 - Is the planning proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?

Tweed Urban and Employment Land Release Strategy 2009

The Tweed Urban and Employment Land Release Strategy 2009 outlines an urban land release program for the Shire until 2031, with a focus on existing zoned and some greenfield development over the life of the Strategy. It was adopted by Council on 17 March 2009.

Enabling large lot residential use of the site would be compatible and consistent with the adjoining land uses. The site is located in an area that is characterised by large lot residential development, is close to existing urban services and development of the site will utilise existing infrastructure services. The proposal is generally consistent with the principles of the Strategy, such as land constraint methodology, supporting centers and providing housing diversity.

Draft Tweed Rural Land Strategy

Tweed Shire Council is preparing a Rural Land Strategy that will provide a framework for the planning and management of rural land across the Shire. The draft documents prepared to date note that this draft strategy is not intended to be a rural residential strategy.

It is discussed throughout this planning proposal request, that the land is not suited for agricultural use and given its location, residential development at the site would not have any detrimental impact on wider agricultural practices.

The proposal is consistent with the draft strategy given that:

- it does not discourage sustainable agricultural production and nor impact usable agricultural land
- it will protect and improve environmental values and responds to natural hazards
- it provides greater housing opportunity
- it promotes sustainable land use practices
- it does not impact extractive industries and the potential for land use conflict is minimal

Community Strategic Plan 2017-2027

The Strategic Plan sets Council's broad governance directions for the next decade. A key direction under the Tweed Strategic Plan is the provision of housing that will contribute to housing diversity, lifestyle choice, particularly eco-led lifestyle opportunities, and affordability within the Shire.

The service streams, sub-streams, goals, targets and strategies which relate to this proposal, and which it is consistent with, include:

Leaving a Legacy

1.1 Natural resource management

- Goal
Protect and manage the environment and natural beauty of the Tweed for current and future generations, and ensure that ecological sustainability and climate change consideration underpin decision making in Council
- Strategies / Actions
Develop and use regulatory instruments to protect and manage the environment

1.4 Managing community growth

- Goal
Plan for sustainable development which balances economic, environmental and social considerations. Promote good design in the built environment.
- Strategies / Actions
Encourage housing diversity and choice that meets the needs of the community
Protect and manage the Tweed's unique character and world heritage scenic landscapes
- Target
Increase the supply and choice of housing and cater for future growth

Making Decisions With You

2.1 Built environment

- **Goal**
Regulate and deliver the built environment to balance the social, cultural, economic and environmental needs of the community.
- **Strategies/ Actions**
Assess and regulate development activity to promote good design in the built environment; and
Determine development applications fairly and accurately

People, places and moving around

3.2 Places

- **Goal**
Provide places for people to live, work, visit, play and enjoy the Tweed.
- **Strategies / Actions**
Promote the distinctive character and diverse identities of Tweed's towns and villages

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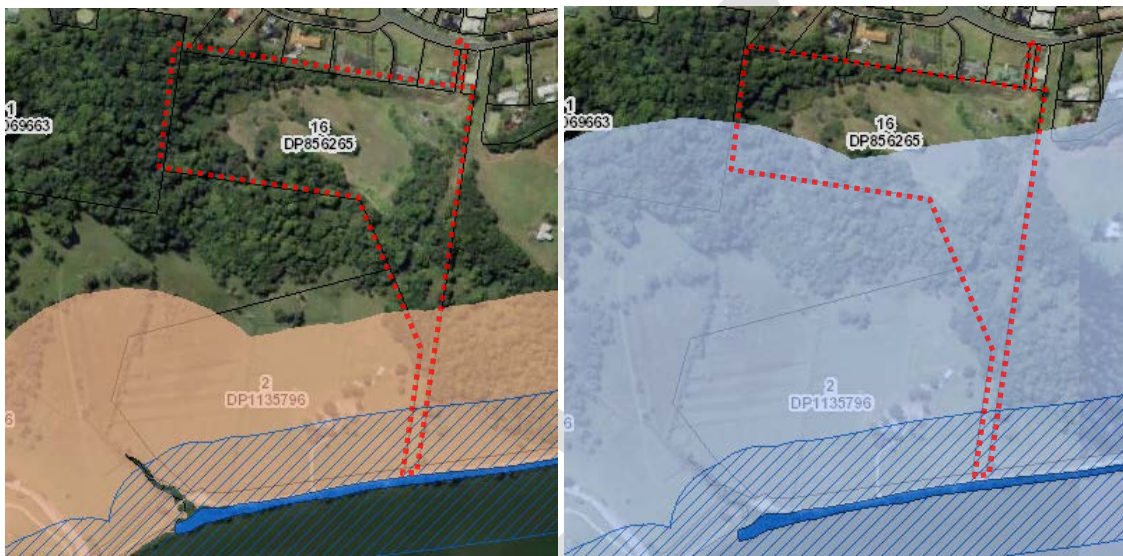
Q5 - Is the planning proposal consistent with applicable state environmental planning policies?

State Environmental Planning Policies (SEPPs)

The following SEPPs are applicable to this proposal:

Coastal Management SEPP

Parts of No. 255 Terranora Road, Banora Point is mapped within the Coastal Environment and Coastal Use areas and the Proximity Area for Coastal Wetlands. The land proposed to be rezoned, and which would be subject to residential development is limited to land mapped as Coastal Environment Area.



Coastal management mapping

While no works are proposed under this planning proposal request (i.e. it seeks a rezoning to facilitate consideration of a DA for future works) an assessment against the heads of consideration for the Coastal Environment Area is provided below:

Coastal Environment Area	
Consideration	Comments
(a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,	<p>The land is free of significant vegetation and has been significantly modified due to former quarrying activities. An ecological assessment of the surrounding vegetation and drainage areas onsite has determined that development can be appropriately accommodated onsite without detrimentally impacting the surrounding vegetation.</p> <p>Any development works onsite will need to be suitably designed and managed to ensure minimal impacts on the natural environment. Zoning the land as proposed under this request does provide scope for developing the land for residential purposes and in turn, accommodating additional environmental protection measures onsite including water quality management and reuse opportunities.</p>

<p>(b) coastal environmental values and natural coastal processes,</p>	<p>Future development on the land is not likely to have any detrimental impact on environmental values or coastal processes, given the distance / separation and height of the land proposed to be rezoned from the Tweed River foreshore,</p>
<p>(c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,</p>	<p>Any new development works onsite will need to be suitably designed and managed to ensure minimal impacts on the natural environment, including surrounding waterways.</p> <p>Zoning the land as proposed under this request does provide additional scope for developing the land and in turn, accommodating additional environmental protection measures onsite including water quality management, reuse opportunities and revegetation / rehabilitation.</p>
<p>(d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,</p>	<p>The development standards proposed reflect the existing heights and density of the adjoining residential land and therefore would not detract away from the scenic qualities or character of the area.</p> <p>Zoning the land as proposed under this request does provide additional scope for developing the land and in turn, accommodating additional environmental protection measures onsite including water quality management, reuse opportunities and revegetation / rehabilitation.</p>
<p>(e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,</p>	<p>Public foreshore access is not provided through the private site.</p>
<p>(f) Aboriginal cultural heritage, practices and places,</p>	<p>The land has historically been cleared, quarried and is surrounded by urban development and infrastructure. The likelihood of the site containing significant aboriginal items is low. Measures to protect cultural significance can be determined under any future DA that seeks to undertake works onsite. Alternatively, further detailed investigation could be undertaken as part of this planning proposal process to determine the significance of the land and if further site-specific provisions or development controls are required to manage it.</p>
<p>(g) the use of the surf zone.</p>	<p>Rezoning the land is not likely to impact on surf zones given the location of the site.</p>

SEPP 55 Remediation of Land

SEPP 55 provides a statewide planning approach to the remediation of contaminated land. This policy aims to promote the remediation of contaminated land to reduce the risk of harm to human health or any other aspect of the environment.

Under Clause 6, a public authority must not rezone land unless

- the planning authority has considered whether the land is contaminated, and
- if the land is contaminated, the planning authority is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for all the purposes for which land in the zone concerned is permitted to be used, and
- if the land requires remediation to be made suitable for any purpose for which land in that zone is permitted to be used, the planning authority is satisfied that the land will be so remediated before the land is used for that purpose.

The site was previously used as a quarry for supplying 'blue' metal, basal boulders, road gravels and aggregate. Once these operations concluded the land was remediated and has since remained vacant / unused land. There have been attempts to use the land for horticultural purposes, however these were unsuccessful due to low soils depths and moisture retention.

A detailed site contamination assessment was undertaken in 2002 which confirmed that the land is suitable for residential uses. Soil samples taken from the site did not indicate contamination levels above threshold levels and confirmed that the potential for harmful contamination is low. No further testing or remediation was recommended by this review.

Council has raised concern regarding fill being placed over the site without any record of its origin, though Council's compliance unit has indicated that it has no outstanding compliance issues with the site (this correspondence is attached to this request).

Further soil analysis of the unapproved fill area has since been undertaken. Analysis for potential contaminants and the results revealed that samples collected during the implementation of the Soil and Analysis Quality Plan were all below the adopted investigation criteria for contaminants of potential concern for proposed residential land use. The assessment concluding that in relation to potential site contamination associated with the current and former land use, the proposed rezoning would be suitable for the future proposed residential land use.

In light of the above, the provisions of SEPP 55 are considered to be satisfied.

SEPP 44 Koala Habitat Protection

SEPP 44 encourages the conservation and management of natural vegetation areas that provide habitat for Koalas to ensure permanent free-living populations will be maintained over their present range.

The site is not mapped under Council's Comprehensive Koala Plan of Management to contain preferred Koala habitat.

An assessment of the site has been undertaken for core koala habitat. The attached ecological report confirms that the site is not considered to be important koala habitat. The proposed rezoning also only applies to the cleared area of the site.

No further Koala habitat testing is considered necessary as part of this proposed planning proposal request.

Q6 - Is the planning proposal consistent with applicable Ministerial Directions (s.9.1 Directions)?

The following table provides an assessment of the proposal against applicable Ministerial Directions.

9.1 Direction	Objective of the Direction	Is proposal consistent?	Comments
1.2 Rural Zones	The objective of this direction is to protect the agricultural production value of rural land	No	<p>The proposal seeks to rezone land from 1(c) Rural Living under the Tweed LEP 2000 to R5 Large Lot Residential under the Tweed LEP 2014.</p> <p>While the R5 zone could be considered an equivalent zone to the 1(c) Rural Living zone, the proposal is considered inconsistent with this Direction given that the 1(c) zone is an agricultural zone under the Tweed LEP 2000 and that the R5 zone is a residential zone under the Standard Instrument and Tweed LEP 2014.</p> <p>The inconsistency with this Direction is justified, as it will not reduce the agricultural production values. The inconsistency is of minor significance.</p> <p>The site and adjoining land is not workable productive land. Development of the site would not impact agricultural practices, as there are none in the area.</p> <p>The inconsistency with this Direction is therefore justified.</p>
1.5 Rural Lands	<p>The objectives of this direction are to:</p> <ul style="list-style-type: none"> a) protect the agricultural production value of rural land, b) facilitate the orderly and economic use and development of rural lands for rural and related purposes, c) assist in the proper management, development and protection of rural lands to promote the social, economic and 	No	<p>The proposal is considered predominately, however not wholly, consistent with the North Coast Regional Plan. As such the proposal is not strictly consistent with the Ministerial Direction.</p> <p>The land is identified as being unsuitable for agricultural purposes, fragmented from consolidated agricultural opportunities and does not present a viable option for improving rural economic activities. The use of the subject area for farming purposes would likely result in land use conflicts with the</p>

	<p>environmental welfare of the State,</p> <p>d) minimise the potential for land fragmentation and land use conflict in rural areas, particularly between residential and other rural land uses,</p> <p>e) encourage sustainable land use practices and ensure the ongoing viability of agriculture on rural land</p> <p>f) support the delivery of the actions outlined in the New South Wales Right to Farm Policy</p>		<p>surrounding large lot residential condition.</p> <p>The provisions of State Environmental Planning Policy (Primary Production and Rural Development) 2019 have been considered, however the proposal possesses limited relevance to its content.</p> <p>Finally, areas of the site identified as possessing environmental values have been excluded from the proposal, allowing their retention.</p> <p>In light of the above, it is considered that the inconsistency with direction 1.5 is of minor significance.</p>
2.1 Environment Protection Zones	The objective of this direction is to protect and conserve environmentally sensitive areas.	No	<p>The proposal seeks to rezone environment protection zoned land (an environmental zone which is not supported under the Northern Councils Environmental Zone Review).</p> <p>This land is cleared and was formally used as a quarry. These site attributes are not attributable to scenic protection, particularly that it can be demonstrated that the existing environmental protection zone is predominantly applied to land on the escarpment that is vegetated and not cleared land.</p> <p>The proposal is in general accordance with the North Coast Regional Plan which considers this Direction.</p> <p>The proposal is also supported by a flora and fauna and visual impact assessments which confirm that rezoning the land and future residential use at the site will not have a detrimental impact on natural resources or visual qualities.</p> <p>The inconsistency with this Direction is justified.</p>

2.2 Coastal Management	The objective of this direction is to protect and manage coastal areas of NSW.	Yes	<p>This proposal is considered to be in keeping with the Coastal Management Act 2016, NSW Coastal Management Manual and NSW Coastal Design Guidelines 2003.</p> <p>The proposal does not rezone land which would enable increased development or more intensive land-use of land within a coastal vulnerability area, or identified as a current or future coastal hazard in a local environmental plan or development control plan, or a study or assessment</p>
2.3 Heritage Conservation	The objective of this direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.	Yes	<p>The site was used as a former quarry. The likelihood that any Aboriginal Cultural Heritage sites could remain on the land is low.</p> <p>The land is not recorded to contain known Aboriginal cultural heritage, though Council has mapped the Terranora Ridgeline as an area of predictive significance.</p> <p>Measures to protect cultural significance can be determined under any future DA that seeks to undertake works onsite.</p> <p>Alternatively, further detailed investigation could be undertaken as part of this planning proposal process to determine the significance of the land and if further site-specific provisions or development controls are required to manage it. This is consistent with the former Gateway determination issued for this site.</p>
2.4 Recreational Vehicle Areas	The objective of this direction is to protect sensitive land or land with significant conservation values from adverse impacts from recreation vehicles.	Yes	The planning proposal will not enable land to be developed for the purpose of a recreation vehicle area
2.5 Application of E2 and E3 Zones and Environmental	The objective of this direction is to ensure that a balanced and consistent approach is taken when applying environmental protection zones and overlays to	Yes	The land proposed to be zoned for residential purposes does not contain vegetation which meets the criteria for an E2 or E3 zone;

Overlays in Far North Coast LEPs	land on the NSW Far North Coast.		<p>nor is it being used for environmental conservation or management purposes.</p> <p>Rezoning this land as R5 Large lot Residential is consistent with the Northern Councils E Zone Review Final Recommendations.</p>
3.1 Residential Zones	<p>The objectives of this direction are:</p> <p>(a) to encourage a variety and choice of housing types to provide for existing and future housing needs,</p> <p>(b) to make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services, and</p> <p>(c) to minimise the impact of residential development on the environment and resource lands</p>	No	<p>The planning proposal will allow consideration of increased housing diversity and lifestyle choice in the locality.</p> <p>This Direction provides that residential development should be limited on the urban fringe.</p> <p>The proposal's inconsistency with this Direction can be justified given the small extension to the growth boundary being proposed, the limited yield able to be achieved at the site due to the LEP controls being proposed and site constraints and that the vegetated escarpment forms the logical urban growth boundary for the area.</p> <p>The proposal in this regard is not likely to raise issues for infrastructure, nor costs that would not be borne by the developer. The proposal is also consistent with the relevant Regional Plan and notably, Northern Councils E Zone Review Final Recommendations.</p> <p>The proposal's inconsistency with this Direction is justified.</p>
3.2 Caravan Parks and Manufactured Home Estates	The objectives of this direction are to provide for a variety of housing types, and to provide opportunities for caravan parks and manufactured home estates.	Yes	While it is unlikely the site will be developed for caravan or manufactured home uses, the proposed zoning provides opportunity through being a permitted with consent land use.
3.3 Home Occupations	The objective of this direction is to encourage the carrying out of low-impact small businesses in dwelling houses.	Yes	The proposal does not alter the provisions under the LEP which relate to home occupations.

3.4 Integrating Land Use and Transport	The objective of this direction is to ensure that urban structures, building forms, land use locations, development designs, subdivision and street layouts achieve the certain planning objectives relating to access, transport and the like.	Yes	<p>The site is located in an urban area and close to the commercial centre of Tweed Heads</p> <p>Public buses service Terranora Road.</p>
4.1 Acid Sulfate Soils	The objective of this direction is to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulfate soils.	Yes	<p>The land subject to the proposal is mapped under Council's GIS as potentially containing Class 5 acid sulfate soils.</p> <p>Class 5 is generally applied as a buffer to land which adjoins land likely to contain acid sulfate soils. The potential to identify acid sulfate soils on the land is therefore low. Earthworks associated with any future subdivision is also unlikely to encounter groundwater.</p> <p>It is noted that acid sulfate soils and groundwater were not encountered when investigating earthworks for the adjoining land at 221 Terranora Road, Banora Point (DA 15/0443).</p> <p>Council's LEP does contain standard controls to ensure acid sulfate soils are appropriately investigated and managed at the Development Application stage.</p> <p>Further studies at this stage would be unnecessary in the case.</p>
4.2 Mine Subsidence and Unstable Land	The objective of this direction is to prevent damage to life, property and the environment on land identified as unstable or potentially subject to mine subsidence.	N/A	<p>The land has not been identified as being unstable under any study, strategy or other assessment.</p> <p>Council has raised concern regarding land stability, considering the site was used as a former quarry and that top soil has been applied across the land.</p> <p>A geotechnical review has been prepared to consider the characteristics of the land and soil materials and concludes that design responses can be undertaken to ensure a safe residential</p>

			environmental can be achieved including stable lots, building pads, siting of onsite effluent disposal systems, driveways and roadways. The actual response applied at the site can be reviewed in detail with Council at the development application stage to ensure residential development at the land meets its earthworks, building and landscape / visual design requirements.
4.4 Planning for Bushfire Protection	The objectives of this direction are to protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas, and to encourage sound management of bush fire prone areas.	Unresolved	<p>The site is identified as bushfire prone land.</p> <p>Liaison with the commissioner of the NSW RFS is required to demonstrate compliance with this direction. This can occur post Gateway.</p> <p>A bushfire assessment has been prepared for the site which confirms that appropriate APZs can be established between any future dwelling onsite and the surrounding bushfire threat. This is based on a concept subdivision layout that was previously prepared for the land.</p> <p>Any proposed development will need to comply with the design requirement of Planning for Bushfire Protection 2006 including protection zones and construction standards where applicable. This can be addressed at DA stage.</p>
5.10 Implementation of Regional Plans	The objective of this direction is to give legal effect to the vision, land use strategy, goals, directions and actions contained in Regional Plans.	No	<p>A detailed review of the proposal's consistency with the North Coast Regional Plan is contained under Section B, Question 3 of this planning proposal request.</p> <p>Inconsistencies with directions and actions which relate to the Urban Growth Area have been determined to be minor and justified, particularly given the consistency with the Northern Councils E Zone Review.</p>

			This is consistent with the Department's previous Gateway determination issued for the site.
6.1 Approval and Referral Requirements	The objective of this direction is to ensure that LEP provisions encourage the efficient and appropriate assessment of development.	Yes	The proposal includes no additional referral or concurrence requirement. All existing applicable referrals applying to the site will be undertaken at DA stage.
6.2 Reserving Land for Public Purpose	The objectives of this direction are to facilitate the provision of public services and facilities by reserving land for public purposes, and to facilitate the removal of reservations of land for public purposes where the land is no longer required for acquisition.	Yes	The proposal does not create, alter or reduce zonings or reservations that apply to public land.

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Section C - Environmental, social and economic impact

Q7 - Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

A detailed ecological assessment has been prepared and confirms that the proposal will not adversely affect critical habitat or threatened species, populations or ecological communities or their habitat.

An addendum to this ecological assessment has also been prepared to confirm the ecological value of existing small drainage depressions onsite and concludes that there is little conservation value in these areas.

The ecological assessment includes measures to ensure long term viability of all retained vegetation. This includes the identification of buffer areas from the surrounding vegetation communities. Any future dwelling or works onsite should be located outside of these buffer areas. It is noted that these nominated setbacks from the vegetation communities are generally required and consistent with bushfire planning requirements.

Rezoning these nominated buffer areas to R5 is consistent with the Northern Councils E Zone Review Final Recommendations. This land does not contain vegetation that would meet the criteria for an E Zone under the Final Recommendations and therefore does not warrant an environmental zoning. As noted above, the principles of setting development outside of these buffer areas will be achieved due to bushfire setback requirements for the land. Additional site specific DCP provisions to specify these setbacks would seem unnecessary in the case, particularly in light of content of Section A19 of the Tweed Development Control Plan 2008.

Q8 - Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

Contamination

The portion of the site which forms the rezoning footprint has been disturbed by past quarrying activities and has been subject to site filling. Tweed Shire Council's compliance unit has considered this filling and determined that there are no outstanding compliance issues with the site (this correspondence has been attached).

A preliminary investigation into the potential for contaminated soils has been undertaken which confirms that the land is suitable for residential use. In light of the recent site investigations, contamination is considered to be suitably addressed and the provisions of SEPP 55 satisfied.

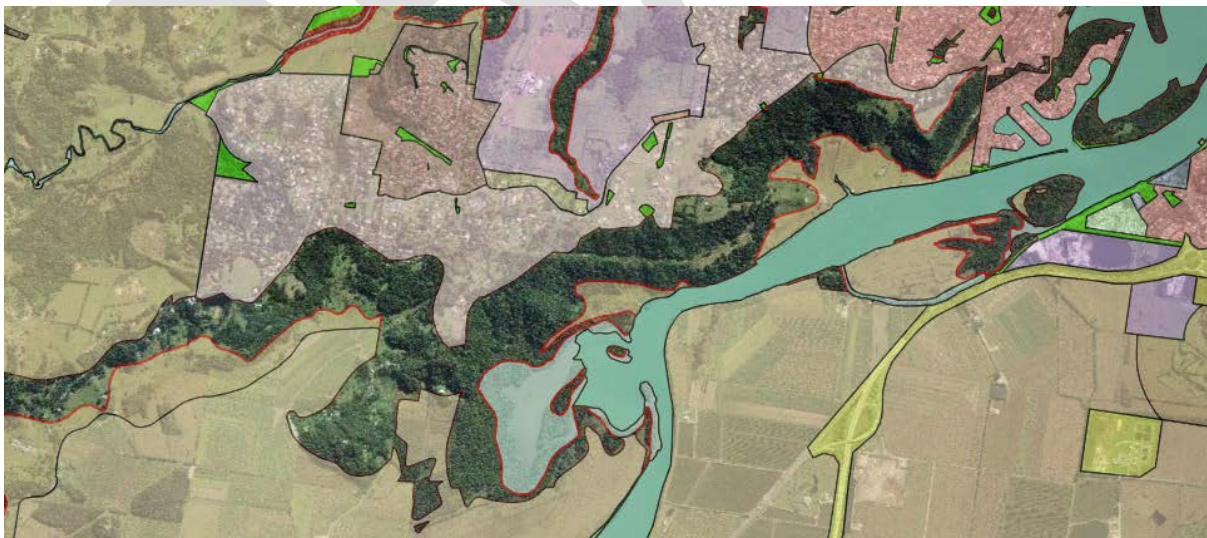
Land Capability

A geotechnical review has been prepared for the site to consider the characteristics of the land and soil materials and concludes that design responses can be undertaken to ensure a safe residential environment can be achieved including stable lots, building pads, siting of onsite effluent disposal systems, driveways and roadways. The actual response applied at the site can be reviewed in detail with Council at the development application stage to ensure residential development at the land meets its earthworks, building and landscape / visual design requirements.

Visual Impact

While the proposal does represent an extension of the existing urban boundary, the visual alteration has been assessed as minor/negligible and the overarching scenic value of the site is not considered to be compromised.

The proposal envelope is contained to cleared land on the elevated portion of the site, enabling existing mature vegetation located on the escarpment 'belt' to be retained. This 'belt' forms part of a strong visual feature, orientated in a predominately east-west configuration, defining the urban boundaries of Banora Point and Terranora to the rural landscapes below. This existing setting and character of the Terranora ridgeline when viewed from the south comprises residential dwellings located within non-vegetated tracts, closely hugging the ridgeline. These dwellings are viewable from neighbouring properties, elevated land, as well as Tweed Valley Way and the Pacific Highway from a distance.



The vegetated escarpment forms the urban buffer area for Terranora and Banora Point from rural lands below

This character has been further consolidated within the immediately locale as the property immediately to the east of the site, being 221 Terranora Road, pursues further subdivision and rural residential development, in accordance with recent approvals. The cleared land at this site is, for the

most part, zoned R5 Large Lot Residential. Development of this land for residential purposes was not considered to be detrimental to the scenic character of the area.



Land at the site which is proposed to be rezoned is shown in red. 221 Terranora Road is shown in yellow.

A Visual Impact Assessment (VIA) has been undertaken to assess the proposal against its landscape and scenic qualities and can be found under **Attachment 4**. This assessment was prepared considering a concept subdivision layout of nine (9) allotments. It confirms that large lot residential development at the site would be consistent with the existing landscape and urban character of the escarpment, which is characterised by recurrent dwelling rooflines that are located within large residential allotments above the escarpment vegetation. The analysis also concludes that urban development at the site is unlikely to generate detrimental impacts on existing views from neighbouring properties.

These assumptions are based on a concept design for the site, which this request is not claiming to be the intended or proposed development outcome at the site. Rather, this request contends that the VIA simply indicates that there is significant opportunity for residential development to occur on the site without detrimentally impacting scenic quality. Any future proposed development on the land would need to confirm how this will be achieved. This outcome can be suitably guided by the zone objectives and Council's own development controls and safeguards, which include:

- the objectives of the R5 Large Lot Residential Zone which state:
 - *To provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality; and*
 - *To maintain the rural and scenic character of the zone.*
- the controls contained under the Tweed Development Control Plan 2008 Section A1 Part A- Dwellings, Dual Occupancy, Secondary Dwellings and Alterations and Additions which seek to guide development to 'maintain the integrity of the topographic and scenic landscapes of the Tweed' as well as minimise potential visual impacts.
- the controls under Tweed Development Control Plan 2008 Section A5 – Subdivision Manual, which particularly state:
 - *The neighbourhood and subdivision design should protect the landscape character of the locality by contributing to the scenic amenity of the landscape and the distinct identity of the area; and*
 - *Neighbourhood and subdivision design must protect the visual landscape of the locality*

In addition to the previously prepared VIA, an addendum can also be found under Attachment 4, which calibrates the previous assessment to Council's draft Scenic Landscape Strategy (draft SLS). The draft SLS possesses a more direct focus on views from public vantage points, as opposed to private views, which are subject to tests established through the Land and Environment Court. This addendum further confirmed the proposal as being appropriate, with no likely impacts of

significance when considering the viewsheds of the Pacific Highway, Tweed Valley Way and the Tweed River.

When considering the criteria for applying zones to land that has been deferred from the Tweed LEP 2014, the character of the locality and origin of scenic qualities, it is evident that the R5 Large Lot Residential zone is suitable for the land. The safeguards mentioned above would guide any future subdivision and residential proposal over the land to ensure a suitable development outcome is achieved. Precluding the proposal from progressing based on visual impact considerations would seem unreasonable in the case and inconsistent with the previous Gateway determination issued over the site. Likewise, opportunities are present through the DA process to ensure development is appropriate and in a manner sympathetic to the site conditions, similar to contemporary proposals such as the Vista development on McAuleys Road.

Other Environmental Considerations

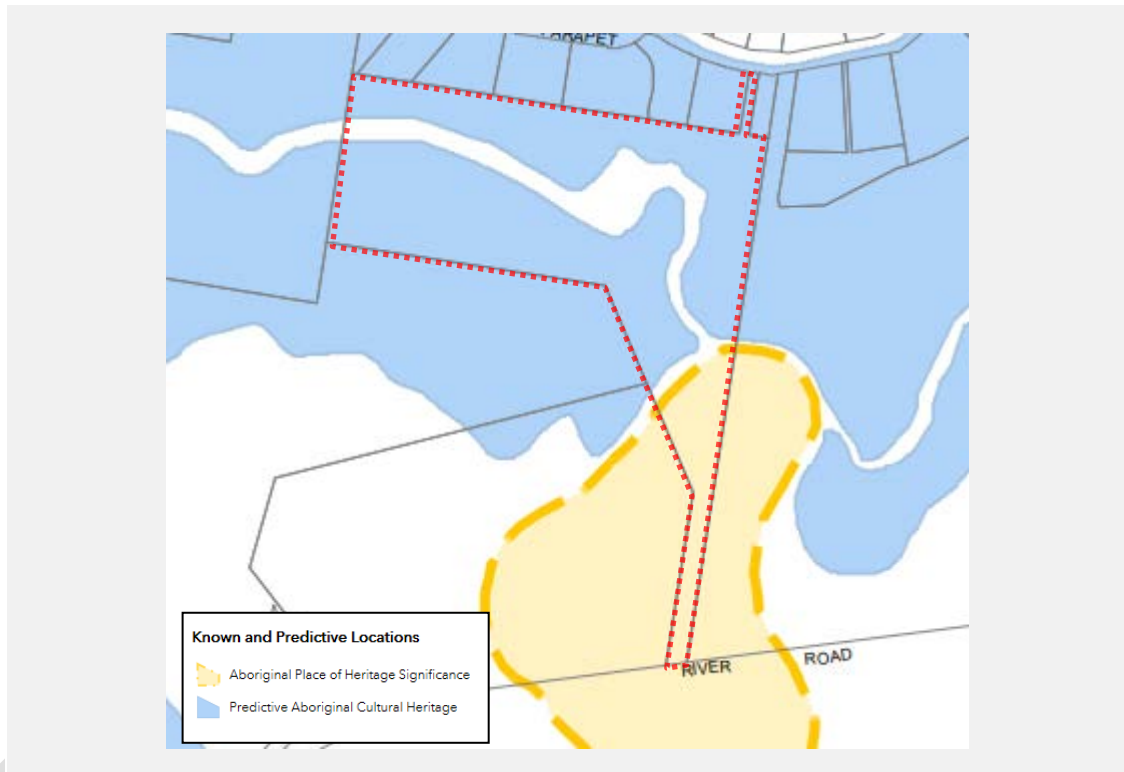
Environmental studies prepared in support of this planning proposal show no adverse effects on environmental resources. Other potential environmental effects, including stormwater, erosion and sediment and acid sulfate soils management will ultimately need to be addressed during the development consent stage. These matters will be guided by Council's existing LEP, DCP and technical design provisions.

Q9 - How has the planning proposal adequately addressed any social and economic effects?

Effects on European or aboriginal cultural heritage

The *Tweed Aboriginal Cultural Heritage Management Plan 2018* (ACHMP) is a document that categorises Aboriginal Cultural Heritage (ACH) within the Tweed Shire as either 'Known', 'Predicted' or unmapped, and sets out relevant levels of cultural heritage assessment for all proposed development.

The land proposed to be rezoned is mapped as 'Predictive' under the ACHMP. A due diligence assessment against this the heads of consideration under the ACHMP has therefore been undertaken



Step 1: Will the activity disturb the ground surface?

Yes. While no works are proposed under this rezoning request, it is acknowledged that the planning framework sought enables future development and earthworks to be undertaken on the land in association with any subdivision or dwelling construction.

The potential works area has been significantly disturbed, given it was a former quarry site. These former disturbance activities make it highly unlikely that the site would contain Aboriginal cultural heritage. The proposed rezoning footprint has undergone extensive ground disturbance in terms of the Due Diligence Code.

By Moran's definition the site is Disturbed Terrain that is "...soil landscapes that are dominated by ground surfaces arising from human activity. Soil parent material (and rock sic) have been moved, accumulated, removed or replaced..." (Moran 1996: 161). In such conditions there is little or no possibility of significant Aboriginal cultural heritage.

Step 2a: Search of AHIMS Database

A search was conducted on 7 September 2018 of the OEH Aboriginal Heritage Information Management System ('AHIMS', service number 369048) for the site with a 50m buffer (Attached). The search identified two (2) registered Aboriginal sites or declared Aboriginal Places within the search area. This is reflective of the ACHMP mapping which indicates that known

ACH is located on or adjoining the site, but south of any proposed rezoning or future works footprint.

Step 2b: Is the activity in an area where landscape features indicate the presence of Aboriginal cultural heritage?

The land proposed to be rezoned is mapped as being within a Predictive area for ACH. This is due to portions of the site being positioned on a ridgeline and escarpment area, which are criteria under the ACHMP for mapping 'Predictive' ACH. These land characteristics are considered to have been former travelling and observational routes and therefore have a greater potential for containing ACH.

While the land meets this criteria, the mapping does not consider the true characteristic of the land, which is this site is a former quarry. Considering the tests above, this disturbed terrain has little or no possibility of ACH.

Measures to protect any potential ACH could therefore be considered and determined under any future DA that seeks to undertake works onsite.

Alternatively, further detailed investigation could be undertaken as part of this planning proposal process to determine the significance of the land and if further site-specific provisions or development controls are required to manage it. This is consistent with the former Gateway determination issued for this site.

Other Social and Economic Considerations

The proposed rezoning will promote housing diversity and a small addition to stock in the local area. It will also contribute to job creations in the short term and increased economic activity in the local area.

Development contributions and ongoing rate levies borne from the development will be collected to contribute to local infrastructure upgrades and maintenance. Given the site is close to key Pacific Highway interchanges, bus services and the commercial precincts of Tweed and Banora Point, residents at the site will have suitable access to social, health and community infrastructure without creating an unreasonable demand for these services.

Residential development would not impact any agricultural or foreshore activities, given its separation from these resource areas.

The site is contiguous with existing residential development to the north, north east and north-west. A visual impact assessment has confirmed that development of the site would not be inconsistent with the existing visual character of the escarpment.

This planning proposal request demonstrates that development of the site will have positive social and economic effects.

Section D - State and Commonwealth interests

Q10 - Is there adequate public infrastructure for the planning proposal?

A Guide to Preparing Planning Proposals notes that this question typically, applies to a planning proposal that results in residential subdivision in excess of 150 lots, substantial urban renewal, infill development and development that will result in additional demand on infrastructure. This is not applicable to this request, given the size of the site and controls proposed.

These Department guidelines do note that a planning proposal should identify whether there may be an expected shortfall in service provision and potential mechanisms to address this shortfall. A review of service provision is provided below.

Water and Sewer

Based only on the minimum lot size controls being proposed for the land, up to sixteen (16) allotments could be permitted if all lots were connected to trunk sewer and water services. Preliminary investigations have indicated that connection to these services, at the cost of the developer, is feasible; however, Council has indicated that there is currently no capacity in existing services to accommodate the additional loadings. Augmenting these services, at the cost of the developer, is likely to not be feasible given the limited number of allotments and therefore unlikely to be pursued through a development application.

In this case, and again only considering the minimum lot size controls being proposed for the land, up to nine (9) allotments could be accommodated onsite. Preliminary investigations have indicated that potable water and onsite services could be provided on this size of allotment to service any future dwellings on the land. The cost of installing these services would be at the cost of the developer / future landholder.

Council has queried the suitability of the site for onsite sewer based on soil depths and potential for upslope seepage. The previous Gateway determination considered it was suitable to investigate the lands' suitability for onsite effluent post Gateway.

An on-site sewage management assessment report has been prepared which details the quantity of land required to cater for effluent disposal and recommends minor earthworks to support efficient disposal, specifically 300mm (height) of fill across each irrigation bed. In light of the 1ha minimum lot size, suitable land area is available within the rezoning footprint to enable on-site sewage management, as identified by the report. As no subdivision plan is proposed or being proposed under this planning proposal, further detail relating to individual land application area evaluations; system selection; system operation and maintenance; and ongoing system management is not considered appropriate as these assessments would be theoretical and more appropriately considered at the Development Assessment stage.

In accordance with Clause 7.10 of the Tweed LEP 2014, development consent cannot be granted to subdivide the land unless Council is satisfied that adequate arrangements for the disposal and management of sewage are in place. Operating a system of sewage management is a prescribed activity under section 68 of the *Local Government Act 1993*. This means that an approval to operate either onsite sewer or connect to Council's trunk system must be obtained from Council. That is, if an appropriate response for managing sewage cannot be demonstrated under any future Development Application, the land cannot be subdivided.

There are a range of site design options and systems available for making sure sewage generated onsite can be appropriately managed. Zoning the land to R5 is consistent with the zoning approach for the area and provides certainty for the landowners to invest in further site-specific investigations and management responses to address the necessary requirements of a subdivision development application.

Electrical and Telecommunications

These services are currently available to the site. Preliminary investigations have indicated that there will be no detrimental impacts or public cost to support residential development at the site.

Road Access

A new internal driveway / roadway would be provided at the developer's cost.

A detailed access and traffic review of a potential site access arrangement has been undertaken which has confirmed that roadway access from Terranora Road is sufficient for the site and that vehicle movements from the site will not have any detrimental impact on traffic movements along Terranora Road. The traffic review has outlined potential intersection design requirements with Terranora Road, that would be dependent on final lot yield. These upgrades can be investigated further under a Development Application to determine costs and feasibility. The provision of any necessary upgrade works would be borne by the developer.

Wider social, health and community infrastructure

The site is limited to 3.6 hectares and the zone, minimum lot size controls, other DCP and technical guideline requirements and site characteristics would limit the amount of new residential development at the site.

Development contributions and ongoing rate levies borne from the development will be collected to contribute to local infrastructure upgrades and maintenance. Given the site is close to key Pacific Highway interchanges, bus services and the commercial precincts of Tweed and Banora Point, residents at the site will have suitable access to social, health and community infrastructure without creating an unreasonable demand for these services.

Q11 - What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

The proposal is consistent with the NSW Premier's priorities / commitments to bettering NSW and specifically, the Premier's priority to supporting more housing. The proposal seeks to provide new housing opportunity on land that adjoins residential land and is not being used or reserved for any environmental or resource protection purpose.

Following the initial gateway determination, formal views of relevant authorities shall be sought and considered.

This planning proposal request has indicated that consultation with the NSW Rural Fire Service and the Local Aboriginal Land Council could be undertaken if required by the Gateway to address any outstanding Ministerial Directions. We note that the former Gateway determination issued for this site did require consultation with these agencies as well as NSW Office of Environment and Heritage.

Part 4 - Mapping

For the purposes of community consultation, the mapping contained within and attached to this Report, appropriately identifies the site and proposed development controls. The concept redevelopment images provide an indication of potential subdivision layouts but are not reflective of any proposed or definitive development outcome at the site.

Mapping which would form part of the legal instrument will be prepared prior to legal drafting. This would generally be limited to a site map for the purposes of identifying the land referred to under the new additional permitted use clause

Part 5 - Community Consultation

Public exhibition of the Planning Proposal will be undertaken to inform the community and seek feedback. As a minimum, it is envisaged that Council would notify its community via a notice:

- in a local newspaper
- on the Council website
- in writing to adjoining landowners

Regarding impacts:

- the proposal is consistent with the pattern of adjacent land use zones & land uses;
- the proposal is consistent with the strategic planning framework;
- the proposal does not represent any significant infrastructure issues;
- the proposal is not a principal LEP; and
- the proposal does not involve reclassification of public land.

The proposal therefore would meet the 'low impact' threshold, only requiring exhibition for 14 days. This timeframe could be extended if it was considered appropriate or necessary.

Part 6 - Project Timeline

The following timeline is provided to assist the Gateway in determining a timeframe for finalising the Plan. It will also provide as a mechanism for monitoring the progress of the planning proposal through the plan making process to more accurately manage resources to ensure there are no unexpected delays in the process.

Anticipated Gateway Determination	Unknown
Completion of required technical information	2 months
Government Agency consultation	2 months
Public Exhibition (14 days)	14 days
Consideration of submissions/proposal post exhibition	1 month
Submit to finalise LEP	1 month
Local Plan Making Authority will make the LEP	1 month
Total	7 months

1 Strategic & Site-Specific Merit Tests

Does the proposal have strategic merit? Is it:

Consistent with the relevant regional plan outside of the Greater Sydney Region, the relevant district plan within the Greater Sydney Region, or corridor/precinct plans applying to the site, including any draft regional, district or corridor/precinct plans released for public comment;

Applying a R5 Large Lot Residential zone to the site is generally consistent with the North Coast Regional Plan (the Plan). The proposal achieves the majority of the directions and actions under this Plan, and where inconsistencies have been identified, these have been justified. Variations are discussed in detail under Section B, Question 3 of this planning proposal request. We note that this consistency with the Plan is detailed in the Department of Planning and Environment's Gateway determination dated 8 August 2017 and the supporting Planning Team Report, also dated 8/5/2017. The Planning Team Report identifies the proposed rezoning met the requirements of the Plan for the following reasons.:

1. The proposed R5 zone will apply only to an area of approximately 3.6 hectares which is a disused quarry
2. The land is on the edge of the existing rural residential and urban area of Terranora and will not require the provision of new or significantly upgraded water and sewerage infrastructure
3. The proposal has availability to public transport along Terranora Road to Tweed Heads
4. The subject land is serviced by existing road infrastructure which Council's engineers are satisfied is adequate for the proposed scale of future development
5. The proposal will provide additional rural residential housing option in Tweed LGA
6. The site is largely unconstrained by flooding and acid sulfate soils. It is expected that bushfire risk can be mitigated at development application stage and adequate evacuation routes to non-bushfire prone land exist
7. The land does not contain significant natural resources and the proximity to existing residential land, and the existing residences on the subject land, would likely preclude the use of the land for sustainable commercial agriculture or future extractive industry use;
8. The land proposed to be zoned R5 is not mapped as containing significant mineral resources and is located outside of the transition zone for the Dodds Island construction sand resource identified by the Department of Industry and Investment Mineral Resource Audit; and
9. The relatively small area of the proposed R5 zone (3.6ha) add minor lot yield (2 lots) will not create an unreasonable demand for health, education and other social services in the area.

Whilst the above findings are concurred with, of note, ongoing discussions with Tweed Shire Council have identified limitations within the wider sewer network. The proponent will continue discussions with relevant Council staff, however in light of the proposed land use zone, on-site effluent systems are likely to be pursued.

The current proposal applies to the same land and seeks to apply the same zone and LEP controls that were supported under this former Gateway assessment. Although the previous proposal outlined that only two (2) allotments would be permitted on the land, the mechanism for controlling this was not outlined in the proposal.

This request notes that the requirement for only two (2) allotments being permitted on the land was not based on any plan, detailed assessment or impact analysis and therefore should not be made a requirement for the rezoning progressing. The existing technical studies applying to the site considered various levels of development intensity and yield and indicated that suitable development outcomes can be achieved.

The maximum development potential for the land will need to be investigated in detail once there is certainty that residential development at the site is permitted. The existing LEP and DCP controls as well as other technical guidelines will then guide these assessments and ensure a suitable development outcome on the land is achieved.

The reasons listed above in the Planning Team Report remain consistent with the current proposal.

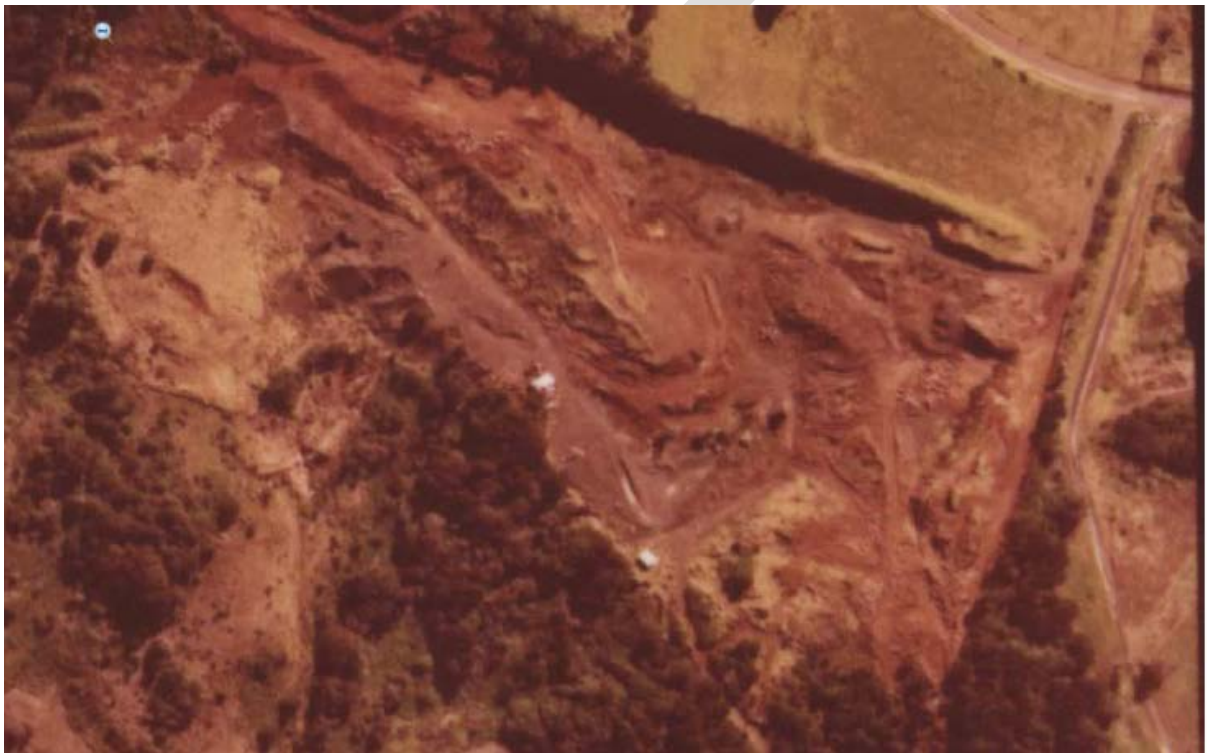
Consistent with a relevant local council strategy that has been endorsed by the Department;

Tweed Shire Council does not have a residential or rural residential strategy for the Tweed LGA, which has been endorsed by the Department.

Responding to a change in circumstances, such as the investment in new infrastructure or changing demographic trends that have not been recognized by existing planning controls.

Historically, this land was not considered for residential zoning as it was used as a quarry.

Land immediately to the north of the site was zoned to allow residential subdivision and was approved for rural residential subdivision in 1985, when trunk services were not available in the area and the quarry was still in operation. This is shown in the image below.



The land is no longer used as a quarry and trunk services are now available to the area. Despite this change in land uses / circumstances at the site, an environmental protection zone continues to be applied to the land under the Tweed LEP 2000.

The LEP 2000 is an environmental planning instrument that does not conform to the NSW Standard Instrument (Local Environmental Plans) Order 2006 and applies a zone to the land that is not reflective of the site's characteristics or surrounding land uses. This zone is also not supported under the Final Recommendations of the Northern Councils E Zone Review.

The Northern Councils E Zone Review Final Recommendations indicate how land which has been deferred from the Tweed LEP 2014 is to be zoned. These recommendations have not been applied since being issued in 2016.

The planning proposal request in this regard is responding to changes in circumstances that have not been recognised by the existing planning controls.

Does the proposal have site-specific merit, having regard to the following:

The natural environment (including known significant environmental values, resources or hazards) and

Potential impacts on the natural environment are detailed under Section C of this planning proposal request. The land proposed to be rezoned is not flood prone and does not contain important resources such as key agricultural soils or minerals. Key natural environment considerations for the site are discussed below.

Land Capability

A geotechnical review has been prepared for the site to consider the characteristics of the land and soil materials and concludes that design responses can be undertaken to ensure a safe residential environment can be achieved including stable lots, building pads, siting of onsite effluent disposal systems, driveways and roadways. The actual response applied at the site can be reviewed in detail with Council at the development application stage to ensure residential development at the land meets its earthworks, building and landscape / visual design requirements.

Based only on the minimum lot size controls being proposed for the land, up to sixteen (16) allotments could be permitted if all lots were connected to trunk sewer and water services. Preliminary investigations have indicated that connection to these services, at the cost of the developer, is feasible; however, Council has indicated that there is no capacity in these services to accommodate the additional loadings. Augmenting these services, at the cost of the developer, is likely to not be feasible given the limited number of allotments and therefore unlikely to be pursued through a development application in the immediate future.

There are a range of site design options and systems available for making sure sewage generated onsite can be appropriately managed. Zoning the land to R5 is consistent with the zoning approach for the area and provides certainty for the landowners to invest in further site-specific investigations and management responses to address the necessary requirements of a subdivision development application.

Ecological

A detailed ecological assessment has been prepared and confirms that the proposal will not adversely affect critical habitat or threatened species, populations or ecological communities or their habitat. An addendum to this ecological assessment has also been prepared to further analyse the ecological value of existing small drainage depressions onsite and concludes that there is little of conservation value in these areas.

The Biodiversity Conservation Act 2016 and associated Regulation 2017 also set out threshold levels for when the Biodiversity Offsets Scheme will be triggered. Neither the rezoning, nor any future works would meet the threshold requirements given the rezoning footprint is confined to the cleared areas of the site. The small clump of regrowth vegetation in the centre of the site has not been identified to have ecological significance and is less than 0.5ha in area. The rezoning footprint is outside of a mapped area on the Biodiversity Values map published by the Minister for the Environment

Rezoning this environmentally zoned land to R5 Large Lot Residential is consistent with the Northern Councils E Zone Review Final Recommendations. This land does not contain vegetation that would meet the criteria for an E Zone under the Final Recommendations and therefore does not warrant an environmental zoning. As noted above however, the principles of setting development outside of these buffer areas will be achieved due to bushfire setback requirements for the land.

Cultural Heritage

The land is not identified to contain known Aboriginal cultural heritage. Though Council has mapped the Terranora Ridgeline as an area of predictive significance under its Aboriginal Cultural Heritage Management Plan, the site has been substantially disturbed due to former quarry

activities. The surrounding development pattern also provides an indication that Aboriginal Cultural Heritage sites on the land are unlikely.

Measures to protect cultural significance can be determined under any future DA that seeks to undertake works onsite.

Alternatively, further detailed investigation could be undertaken as part of this planning proposal process to determine the significance of the land and if further site-specific provisions or development controls are required to manage it. This is consistent with the former Gateway determination issued for this site.

The former Gateway determination issued for the site required an Aboriginal Cultural Heritage assessment to occur post Gateway.

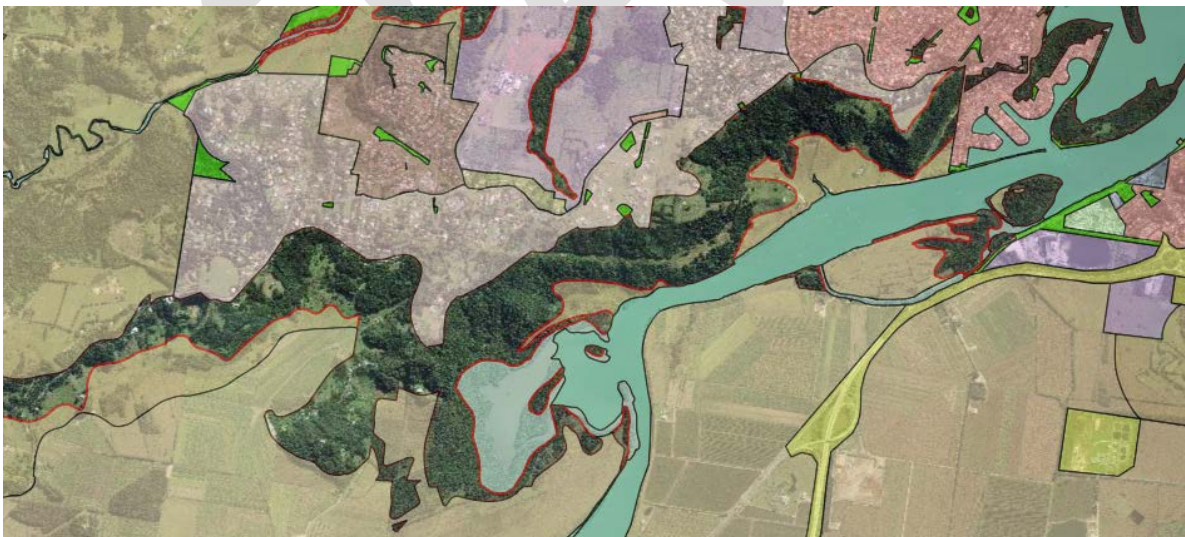
Contamination

The portion of the site which forms the rezoning footprint has been disturbed by past quarrying activities and has been subject to site filling. Tweed Shire Council's compliance unit has considered this filling and determined that there are no outstanding compliance issues with the site (this correspondence has been attached).

A preliminary investigation into the potential for contaminated soils has been undertaken which confirms that the land is suitable for residential use. In light of the recent site investigations, contamination is considered to be suitably addressed and the provisions of SEPP 55 satisfied.

Visual Impact

While the proposal does represent an extension of the existing urban boundary, the scenic value of the escarpment would not be compromised. The proposed zone aligns the mature vegetation onsite. This mature vegetation for the most part of the escarpment defines the urban boundary for Banora Point and Terranora. This urban boundary comprises residential dwellings which are viewable from neighbouring properties, elevated land, Tweed Valley Way and the Pacific Highway.



The vegetated escarpment forms the urban buffer area for Terranora and Banora Point

This is particularly evident when considering the property immediately to the east of the site, being 221 Terranora Road. The cleared land at this site is, for the most part, zoned R5 Large Lot Residential. An approval has recently been issued by Tweed Shire Council and supported by the Department of Planning and Environment, to subdivide this adjoining site for residential purposes. Development of this land for residential purposes was not considered to be detrimental to the scenic character of the area.



Land at the site which is proposed to be rezoned is shown in red. 221 Terranora Road is shown in yellow.

A visual impact analysis has been undertaken to determine how development of the site may influence the landscape / scenic quality of the area and how this is experienced. This assessment was based off a concept subdivision layout of nine (9) allotments. It confirms that residential development at the site would be consistent with the existing landscape and urban character of the escarpment, which is characterised by recurrent dwelling rooflines that are located within large residential allotments above the escarpment vegetation. The analysis also concludes that urban development at the site is unlikely to generate detrimental impacts on existing views from neighbouring properties.

These assumptions are based off a concept design for the site, which this request is not claiming to be the intended or proposed development outcome at the site. Rather, this request contends that the analysis simply indicates that there is significant opportunity for residential development to occur on the site without detrimentally impacting scenic quality. Any future proposed development on the land would need to confirm how this will be achieved. This outcome can be suitably guided by the zone objectives and Council's own development controls and safeguards, which include:

- the objectives of the R5 Large Lot Residential Zone which state:
 - *To provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality; and*
 - *To maintain the rural and scenic character of the zone.*
- the controls contained under the Tweed Development Control Plan 2008 Section A1 Part A-Dwellings, Dual Occupancy, Secondary Dwellings and Alterations and Additions which seek to guide development to 'maintain the integrity of the topographic and scenic landscapes of the Tweed' as well as minimise potential visual impacts.
- the controls under Tweed Development Control Plan 2008 Section A5 – Subdivision Manual, which particularly state:
 - *The neighbourhood and subdivision design should protect the landscape character of the locality by contributing to the scenic amenity of the landscape and the distinct identity of the area; and*
 - *Neighbourhood and subdivision design must protect the visual landscape of the locality*

The Northern Councils E Zone Review – Final Recommendations confirms that scenic protection cannot be used as a criteria for applying an environmental zone to a site. This land continues to be deferred from the Tweed LEP 2014, with a scenic protection zone applied to it.

When considering the criteria for applying zones to land that has been deferred from the Tweed LEP 2014, it is evident that the R5 Large Lot Residential zone is suitable for the land. The safeguards mentioned above would guide any future subdivision and residential proposal over the land to

ensure a suitable development outcome is achieved. Precluding the proposal from progressing based on visual impact considerations would seem unreasonable in the case and inconsistent with the previous Gateway determination issued over the site.

The existing uses, approved uses, and likely future uses of land near the proposal.

The land uses and zones surrounding the site include rural residential development and scenic escarpment.

The proposal seeks to apply the same zone and controls which applies to the adjoining rural residential land and other cleared land along the Terranora / Banora Point escarpment. Land immediately to the east of the site has been approved for residential subdivision, indicating that new residential development in the area is a suitable land use and compatible with the existing and future intended land uses.

It is not proposed to rezone the vegetated areas of the site, to ensure this land retains the scenic escarpment zone controls under the Tweed LEP 2000, which is consistently applied to the vegetated areas of the escarpment.

The services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangement for infrastructure provision.

Water and Sewer

Based only on the minimum lot size controls being proposed for the land, up to sixteen (16) allotments could be permitted if all lots were connected to trunk sewer and water services. Preliminary investigations have indicated that connection to these services, at the cost of the developer, is feasible; however, Council has indicated that there is no capacity in these services to accommodate the additional loadings. Augmenting these services, at the cost of the developer, is likely to not be feasible given the limited number of allotments and therefore unlikely to be pursued through a development application.

In this case, and again only considering the minimum lot size controls being proposed for the land, up to nine (9) allotments could be accommodated onsite. Preliminary investigations have indicated that potable water and onsite services could be provided on this size of allotment to service any future dwellings on the land. The cost of installing these services would be at the cost of the developer / future landholder.

Council has queried the suitability of the site for onsite sewer based on soil depths and potential for upslope seepage. The previous Gateway determination considered it was suitable to investigate the lands' suitability for onsite effluent post Gateway.

If required, this study could be prepared after it has again been determined that the current proposal may proceed; however, given no subdivision plan is proposed or being proposed under this planning proposal the planning; site evaluation; system selection; system operation and maintenance; and ongoing system management would all be theoretic.

In accordance with Clause 7.10 of the Tweed LEP 2014, development consent cannot be granted to subdivide the land unless Council is satisfied that adequate arrangements for the disposal and management of sewage are in place. Operating a system of sewage management is a prescribed activity under section 68 of the Local Government Act 1993. This means that an approval to operate either onsite sewer or connect to Council's trunk system must be obtained from Council. That is, if an appropriate response for managing sewage cannot be demonstrated under any future Development Application, the land cannot be subdivided.

There are a range of site design options and systems available for making sure sewage generated onsite can be appropriately managed. Zoning the land to R5 is consistent with the zoning approach for the area and provides certainty for the landowners to invest in further site-specific investigations and management responses to address the necessary requirements of a subdivision development application.

Electrical and Telecommunications

These services are currently available to the site. Preliminary investigations have indicated that there will be no detrimental impacts or public cost to support residential development at the site.

Road Access

A new internal driveway / roadway would be provided at the developer's cost.

A detailed access and traffic review of a potential site access arrangement has been undertaken which has confirmed that roadway access from Terranora Road is sufficient for the site and that vehicle movements from the site will not have any detrimental impact on traffic movements along Terranora Road. The traffic review has outlined potential intersection design requirements with Terranora Road, that would be dependent on final lot yield. These upgrades can be investigated further under a Development Application to determine costs and feasibility. The provision of any necessary upgrade works would be borne by the developer.

DRAFT

2 Urban Growth Area Variation Principles

Policy

The variation needs to be consistent with the objectives and outcomes in the North Coast Regional Plan 2036 and any relevant Section 117 Directions and State Environmental Planning Policies, and should consider the intent of any applicable local growth management strategy

Comment:

While the proposal does rely on a variation to the Urban Growth Area Principles, this planning proposal request seeks to demonstrate that this variation has merit.

The proposal would provide additional housing supply and diversity on land which adjoins an existing urban settlement and in an area particularly suited for large lot housing. Development of the land would not impact significant environmental, aboriginal or farmland resources and would maintain a clear green break along the escarpment of Terranora / Banora Point. Development of the site is aligned with existing infrastructure. Extensions to existing services or onsite services would not generate additional cost to government.

The proposal in this regard, and as discussed throughout this planning proposal request, is consistent with the objectives and outcomes in the North Coast Regional Plan, is justified against the relevant section 9.1 (former 117) Directions and SEPPs and meets the intent of the Tweed local growth strategy.

Infrastructure

The variation needs to consider the use of committed and planned major transport, water and sewerage infrastructure, and have no cost to government.

The variation should only be permitted if adequate and cost-effective infrastructure can be provided to match the expected population.

Comment:

The site is located on the periphery of the Banora Point residential area. Power and telecommunication services are currently available to the property.

Preliminary engineering assessments have been undertaken to determine civil matters including traffic and access, water and sewer services, stormwater drainage, electricity and communications would not preclude development at the site and would not have a cost to government.

Environmental and Farmland Protection

The variation should avoid areas:

- of high environmental or heritage value; and
- mapped as important farmland, unless consistent with the interim variation criteria prior to finalising the farmland mapping review.

Comment:

Environmental or heritage value

The site proposed to be rezoned is predominantly clear of vegetation and was a former quarry site. The likelihood of the land containing high environmental or heritage value is low.

With that said, measures to protect areas of vegetation and cultural significance can be determined under any future DA that seeks to undertake works onsite. Alternatively, further detailed investigation could be undertaken as part of this planning proposal process to determine the significance of the land and if further site-specific provisions or development controls are required to manage it.

Important farmland

The site is not mapped as important farmland.

Land Use Conflict

The variation must be appropriately separated from incompatible land uses, including agricultural activities, sewage treatment plants, waste facilities and productive resource lands.

Comment:

The site adjoins residential land to the north. The vegetated escarpment provides an existing buffer between the northern portion of the site and the Tweed foreshore and wider agricultural land.

The site does not adjoin nor is it close to any sewage treatment plant, waste facilities or land mapped as containing mineral resources.

Avoiding Risks

The variation must avoid physically constrained land identified as:

- flood prone;
- bushfire-prone;
- highly erodible;
- having a severe slope; and
- having acid sulfate soils

Comment:

Flood

The proposed rezoning footprint is not flood prone.

Bushfire

It is within a bushfire prone buffer area; however, a bushfire safety authority assessment has been prepared to confirm residential development at the site can meet bushfire planning guidelines. Consultation with the NSW Rural Fire Service will be requirement under this planning proposal process and should be undertaken post Gateway determination.

Land capability

A geotechnical review has been prepared for the site to consider the characteristics of the land and soil materials and concludes that design responses can be undertaken to ensure a safe residential environmental can be achieved including stable lots, building pads, siting of onsite effluent disposal systems, driveways and roadways. The actual response applied at the site can be reviewed in detail with Council at the development application stage to ensure residential development at the land meets its earthworks, building and landscape / visual design requirements.

Acid sulfate soils

The land subject to the proposal is mapped under Council's GIS as potentially containing Class 5 acid sulfate soils. Class 5 is generally applied as a buffer to land which adjoins land likely to contain acid sulfate soils. The potential to identify acid sulfate soils on the land is therefore low.

Council's LEP does contain standard controls to ensure acid sulfate soils are appropriately investigated and managed at the Development Application stage. Further studies at this stage would be unnecessary in the case.

Heritage

The variation must protect and manage Aboriginal and non-Aboriginal heritage.

Comment:

The land is not identified to contain known Aboriginal cultural heritage. Though Council has mapped the Terranora Ridgeline as an area of predictive significance under its Aboriginal Cultural Heritage Management Plan, the site has been substantially disturbed due to former quarry activities. The surrounding development pattern also provides an indication that Aboriginal Cultural Heritage sites on the land are unlikely.

Measures to protect cultural significance can be determined under any future DA that seeks to undertake works onsite.

Alternatively, further detailed investigation could be undertaken as part of this planning proposal process to determine the significance of the land and if further site-specific provisions or development controls are required to manage it. This is consistent with the former Gateway determination issued for this site.

The former Gateway determination issued for the site required an Aboriginal Cultural Heritage assessment to occur post Gateway.

Coastal Area

Only minor and contiguous variations to urban growth areas in the coastal area will be considered due to its environmental sensitivity and the range of land uses competing for this limited area.

Comment:

The site is contiguous with urban growth area land and not environmentally sensitive land. Development at the site has little potential for land use conflict with other land uses in the area.

3 Northern Councils E Zone Review – Assessment

Application of E Zones	
1 When will E zones be applied?	
E2 and E3 zones will only be applied if the primary use of the land is considered to be environmental conservation (E2) or environmental management (E3) and the land contains attributes which meet one or more of the criteria for an E2 or E3 zone (Tables 1 and 2)	<p>The land is not being used for environmental conservation (E2) or environmental management (E3) and does not contain attributes which meet one or more of the criteria for an E2 or E3 zone.</p> <p>The continued deferral of this site from the Tweed LEP 2014 and application of an old (7) scenic protection environmental zone, creates uncertainty for the site and precludes investigations into redevelopment opportunity.</p>
An E4 zone can be applied if the land contains attributes that are consistent with the Department's Practice Note PN09-002 Environment Protection Zones.	The proposal does not seek to apply an E4 zone.
2 How will the primary use of the land be determined?	
The primary use of the land is the main use for which the land has been used for the last two (2) years. This may mean that land which is currently zoned rural will continue to have a rural zone but it may have parts of that land which have attributes that meet the criteria for an E2 or E3 zone included in a mapped planning control	<p>The land proposed to be zoned does not have attributes that meet the criteria for an E2 or E3. It also has not been used for rural or agricultural purposes for the last two (2) or more years.</p> <p>The land has historically been zoned for environmental protection purposes, due to scenic considerations, a criteria that is not supported under the Final Recommendations.</p> <p>Considering the lack of rural attributes over the site and the strategic approach for zoning cleared land along the Terranora / Banora Point escarpment for large lot residential purposes, a R5 zone would be the most suited zone for this land.</p>
The primary use of the land may vary across a particular property depending on the characteristics of the land. This may result in more than one zone being applied to the land	The primary use does not vary across the land proposed to be rezoned.
The primary use of land will be identified during the preparation of a planning proposal.	It is evident through site inspections, review of aerial photography historical development applications, rezoning requests and Gateway determinations that this land has not been used for agricultural or environmental conservation or management purposes and has been acknowledged as suitable residential land.
3 What are the E zone Criteria?	
The land proposed to be zoned E2 or E3 must contain one or more of the criteria listed in Tables 1 and 2.	The land proposed to be zoned does not contain one or more of the criteria listed in Tables 1 and 2.

4 What is the procedure for applying an E2 or E3 zone to land?

Councils will assess land against the E zone criteria and consider the primary use of the land before proposing an E2 or E3 zone.	A detailed flora and fauna assessment has been undertaken over the site, which confirms the land proposed to be rezoned does not contain vegetation which meets the criteria for an E2 or E3 zone. Its primary use is also not agricultural or environmental conservation or management.
An E2 or E3 zone can only be applied to land with a primary use of environmental conservation or environmental management and, which has attributes that have been verified to meet the E zone criteria.	The land proposed to be zoned does not contain vegetation which meets the criteria for an E2 or E3 zone or overlay.
If the land has attributes that meet the E2 criteria, however the primary use of the land is environmental management rather than environmental conservation, a council may apply an E3 zone.	The land proposed to be zoned does not contain vegetation which meets the criteria for an E2 or E3 zone or overlay.
If a council believes the primary use of the land does not warrant an E zone, and the land meets the E zone criteria, then a LEP Map and associated clauses can be applied.	The land proposed to be zoned does not contain vegetation which meets the criteria for an E2 or E3 zone or overlay.
The E zones will not include buffers to the vegetation attributes that meet the E zone criteria.	No E zone is proposed.

5 How is the E zone criteria verified?

An E2 or E3 zone or other mapped planning controls cannot be applied to land unless the attributes that meet the E2 or E3 criteria have been verified on that land.	An E2 or E3 zone is not proposed. Despite this, the land has been verified by biodiversity field inspections and ground surveys conducted by an appropriately qualified person as well as review of current high-resolution photography (contained in this request). We note that the former Gateway determination issued for the site required an aboriginal cultural heritage assessment to be undertaken post Gateway. Should this current request again receive a Gateway determination to proceed, this cultural assessment could then be undertaken to confirm whether this criteria applies to the land. Given the history of the site, the existing development pattern in the area and that no known records have been identified in the locality in the past, this outcome is unlikely. Precluding the proposed rezoning to progress past Gateway due to a study, that was previously considered suitable to be undertaken post Gateway, would seem unreasonable and unnecessary in the case.
Verification of the presence of attributes that meet the E2 or E3 criteria on the site must be undertaken by one or a combination of the following: <ul style="list-style-type: none"> biodiversity field inspections and ground surveys conducted by an appropriately qualified person. 	This is discussed above.

- Aboriginal heritage field inspections and ground surveys conducted by an appropriately qualified person or someone with extensive field experience and in accordance with the Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW, NSW Department of Environment, Climate Change & Water (2010).
- supporting flora and fauna reports conducted by a suitably qualified person and guided by the Draft Framework for Biodiversity Assessment, NSW Office of Environment and Heritage (2014) and the Draft Threatened Biodiversity Survey and Assessment: Guidelines for Developments and Activities, NSW
- Department of Environment and Conservation (2004). Such reports will only be acceptable where the field work is not more than five years old.
- review of current (not more than five years old) high resolution digital aerial photography that has been verified by another one of these verification techniques
- supporting cultural heritage reports conducted by a suitably qualified person and in accordance with a Guide to investigating, assessing and reporting on Aboriginal cultural heritage in NSW, NSW Department of Environment, Climate Change & Water (2011).
- consultation with Aboriginal cultural knowledge holders in regard to culturally significant lands in accordance with and reporting on Aboriginal cultural heritage in a Guide to investigating, assessing NSW, NSW Department of Environment, Climate Change & Water (2011).

Considerations for Applying E Zones and Additional Mapped Planning Controls
Considerations for Applying E Zones and Additional Mapped Planning Controls

6 Transferring environmental zones

The areas of land to which the current environmental protection zones listed in the Table 3 (below) apply, may be zoned E2 or E3 once councils have verified the attributes of the land against the criteria.

Tweed LEP 2000 7(a) Environmental Protection (Wetlands and Littoral Rainforests) 7(l) Environmental Protection (Habitat)

The 7(d) Environmental Protection (Scenic/Escarpment) zone is not an environmental zone supported under the Final Recommendations.

Kyogle Council should apply a rural zone, equivalent to the zone in the superseded Interim Development Order, to the land which was proposed to be zoned E2 or E3 and was deferred from the Kyogle LEP 2012, until such time as investigations are completed to identify appropriate E zones or additional mapped planning controls.	N/A
7 Public and private land inconsistent with the criteria	
Public land may be zoned E2 or E3 despite being inconsistent with the criteria, if the primary use of the land is environmental conservation or environmental management.	N/A
Private land may be zoned E2 or E3 despite being inconsistent with the criteria, only if it is consistent with a negotiated development outcome (master plan, rezoning, development consent, designated offset areas) or at the request of the landowner.	There are no negotiated development outcomes at the site, nor is it requested by the landowner to zone this land for environmental purposes.
8 Voluntarily revegetated land	
Land which has been voluntarily revegetated by the current landowner, will not have an E2 or E3 zone applied to it without the agreement of the current landowner providing: – the revegetation has been actively undertaken and is not the result of natural regrowth; – active revegetation includes a combination of planting, seeding, weed control, fencing, removing stock, watering, ripping, mulching and soil improvement to encourage the natural regeneration of native vegetation; and – the primary use of the land is agriculture.	This land has not been voluntarily revegetated.
• Land which has been voluntarily revegetated can be included on a Vegetation Map without the agreement of the current landowner if the attributes have been verified to meet the criteria for an E2 or E3 zone and the primary use of the land is environmental conservation or environmental management. • If revegetation has been undertaken with the support of grant funding, and a condition of that funding was the ongoing conservation or management of the vegetation, then an E2 or E3 zone may be applied to the land.	This land has not been voluntarily revegetated.
9 Zoning of State and regionally significant farmland	
When zoning State or regionally significant farmland, councils will have to take account of the primary use of the land before applying an E zone or a rural zone.	This land is not State or regionally significant farmland.
10 Application of multiple zones to a single property (split zoned lots)	
More than one zone can be applied to properties where the characteristics of different areas of the land reflect the different primary uses of the land.	Only one zone is proposed to be applied to the land subject to this request.

	The remainder of the site will remain deferred from the LEP 2014 and subject to any wider review by Council for addressing the Final Recommendations.
Councils should consider the suitability of alternative zones or including the land on a Vegetation Map when considering more than one zone for a property.	Only one zone is proposed to be applied to the land subject to this request. The remainder of the site will remain deferred from the LEP 2014 and subject to any wider review by Council for addressing the Final Recommendations.
As a general principle, the use of multiple zones on a property should be minimised as far as possible.	Only one zone is proposed to be applied to the land subject to this request. The remainder of the site will remain deferred from the LEP 2014 and subject to any wider review by Council for addressing the Final Recommendations.
11 Application of the E4 zone in Byron Council	
Byron Shire Council is to prepare a planning proposal to apply a suitable residential zone to that land where an E4 zone was proposed under the draft Byron LEP.	N/A
12 Application of additional mapped planning controls	
Matters of public health, safety, risk and hazard such as drinking water catchments, flooding, coastal risk areas and land subject to strict development controls such as steep land may be included in a LEP Map.	Noted. Council has not applied overlay controls for land slip. The site is not within a drinking water catchment, coastal hazard area and the land subject to the rezoning request is not mapped as being flood prone.
A LEP Map is not to be used for areas of scenic protection or aesthetic values.	This site continues to be deferred from the Tweed LEP 2014 due to scenic protection purposes. This request contends that this land should not continue to be deferred from the LEP, that a R5 Large Lot Residential zone is the most suitable zone for the site and that there are suitable safeguards contained in the Tweed LEP 2014 and DCP 2008 to ensure that scenic protection is a key consideration for any future development proposal over the site.
Land that has been verified to meet the criteria for an E2 or E3 zone where the primary use of the land is not environmental conservation or environmental management may be included in a mapped planning control, such as a Vegetation Map.	The land proposed to be zoned does not contain vegetation which meets the criteria for an E2 or E3 zone or overlay.
Additional Considerations for Far North Coast Councils	
13 Aesthetic values	
Councils on the Far North Coast will not be permitted to use scenic values as an attribute for the application of an E2 or E3 zone or mapped planning controls.	This site continues to be deferred from the Tweed LEP 2014 due to scenic protection purposes. This request contends that this land should not continue to be deferred from the LEP, that a R5

	Large Lot Residential zone is the most suitable zone for the site and that there are suitable safeguards contained in the Tweed LEP 2014 and DCP 2008 to ensure that scenic protection is a key consideration for any future development proposal over the site.
14 Permissibility of agriculture in E Zones	
Extensive agriculture is to be listed as permissible with consent in the E2 zone for all Far North Coast LEPs.	N/A
Extensive agriculture is to be listed as permissible without consent in the E3 zone for all Far North Coast LEPs.	N/A
15 Coastal Zone Management	
Far North Coast councils are to use a Coastal Risk Map and associated clause to manage land affected by coastal hazards.	The land is not subject to coastal hazards.
16 Section 117 Direction	
A Section 117 Ministerial Direction specific to applying E zones and mapped planning controls in Far North Coast LEPs will ensure the consistent application of the final recommendations of the Northern Councils E Zone Review for Ballina, Byron, Kyogle, Lismore and Tweed Local Government Areas.	An assessment against the relevant section 9.1 Directions (former 117 Directions) is provided under this report. It confirms that a R5 zone is consistent with the Final Recommendations and requirements of the Direction.
Statewide Implications	
17 Existing Use Rights	
The Department will investigate the possibility of an amendment to the Environmental Planning and Assessment Act 1979 or the <i>Environmental Planning and Assessment Regulation 2000</i> , to remove or extend the 12-month time limit for abandonment of existing uses for the land use extensive agriculture.	N/A
18 Implications for remainder of the State	
These recommendations will initially apply only to the five Far North Coast councils. However, in the meantime, if other councils in the State are reviewing the application of E zones, then the principles contained in these recommendations can be used. Councils should contact the Department of Planning and Environment for assistance.	N/A
The Department of Planning and Environment will investigate the implications of the Northern Councils E Zone Review final recommendations on the application of E zones and mapped planning controls across the State.	N/A
The Department will consider a revision of the Standard Instrument LEP template to remove 'aesthetic values' from the zone objectives of the E2 and E3 zones.	N/A