

# **Attachment B – Additional Information to Council**

**Our Reference:** J7594

Wednesday, 03 April 2024

**Tweed Shire Council**

Attention: Matthew Zenkteler

Via email: [MZenkteler@tweed.nsw.gov.au](mailto:MZenkteler@tweed.nsw.gov.au)

Dear Matt,

**Planning Proposal PP-2023-2669 'Cudgen Connection'  
Response to Preliminary Advices**

I refer to your correspondence of 9 February 2024, as well as subsequent emails and discussions in relation to the abovementioned Planning Proposal (PP). We thank you for providing the preliminary assessment commentary for consideration. In response, we provide the following information to clarify several of the matters raised. We trust this information will assist Council staff with their assessment of the strategic and site-specific merit of the PP.

In providing the additional clarification, we appreciate both the strategic process of the PP and the focus within 'Stage 2' of the LEP making process being:

- To ensure that a wide audience, including the community, can clearly understand the scope and impacts of the PP.
- To provide technical information as outlined in Attachment C of the Local Plan Making Guideline.
- To assess the PP for strategic and site-specific merit and whether preliminary issues have been addressed and determine whether it should be progressed.

In this regard, we have identified multiple matters raised within the RFI as being outside the scope and focus of the Plan Making Process. Whilst we appreciate and note the feedback for future consideration (through evolution of the overarching Cudgen Connection concept), the PP is confined to a combination of land use zoning, development standards, and other 'local' legislative amendments to achieve the stated Objective and Intended Outcomes. Should these amendments be made, Development Application/s (DA/s) under Part 4 of the *Environmental Planning and Assessment Act 1979* (the Act) will be pursued. Part 4 of the Act provides the appropriate planning framework to undertake a detailed environmental assessment and prescribe project particulars.

We reaffirm the current PP process occurs exclusively within Part 3 of the Act and does not seek consent to undertake any physical works. We appreciate that the immediate task is to determine whether the PP should, or should not, proceed to the NSW Department of Planning, Housing and Infrastructure to seek a Gateway Determination. A resolution to proceed does not infer an 'approval' of the PP, rather, confirms that sufficient strategic and site-specific merit is identified to warrant additional investigation as well as formal stakeholder engagement with the community and Government agencies.

In this regard, we have provided planning commentary for the matters raised within the RFI, and trust that the information addresses Council staffs' queries. Notwithstanding, should matters not be holistically resolved, we welcome further and ongoing discussions. In addition, we acknowledge Council may prescribe additional assessment/s in pursuing any Gateway Determination.

Please find clarification on the matters raised provided overpage.

## Sustainable Agriculture

We note your advice regarding the appointment of a consultant to provide specific Important Farmland assessment. We support the process of seeking independent detailed advices, and look forward to reviewing their findings when available.

We reiterate that the submitted Agricultural Land Assessment and Agricultural Capacity Assessments identify significant limitations of the land for future farming purposes due to its disconnection from surrounding Important Farmland. Further, these assessments highlight the ability for the subject site to be considered for alternate, urban purposes, without detriment to the productivity of farmland to the south and southwest, nor the wider Cudgen Plateau and local value chain for agriculture.

## Strategic Planning

We note your advices regarding the suitability of the SP2 Infrastructure zone in comparison to the SP1 Special Activities zone. For ease of reference, please see a comparison table of the zone objectives of the 2x land use zones below.

	SP1 Special Activities	SP2 Infrastructure
<b>Objectives of the Zone</b>	<ul style="list-style-type: none"> <li>To provide for special land uses that are not provided for in other zones.</li> </ul>	<ul style="list-style-type: none"> <li>To provide for infrastructure and related uses.</li> </ul>
	<ul style="list-style-type: none"> <li>To provide for sites with special natural characteristics that are not provided for in other zones.</li> </ul>	<ul style="list-style-type: none"> <li>To prevent development that is not compatible with or that may detract from the provision of infrastructure.</li> </ul>
	<ul style="list-style-type: none"> <li>To facilitate development that is in keeping with the special characteristics of the site or its existing or intended special use, and that minimises any adverse impacts on surrounding land.</li> </ul>	

When considering the Objective and Intended Outcomes of the PP, we raise concern that the objectives of the SP1 Special Activities land use zoning do not best align. Specifically:

- Hospitals (as well as other proposed land uses) are provided as permitted with consent in other zones.
- The subject site is not identified as containing 'special natural characteristics'. The significant advantage of the subject site is its co-location with the Tweed Valley Hospital site, not its natural characteristics.
- The final objective of the zone is identified as appropriately aligned with the Objective and Intended Outcome of the PP.

Conversely, we raise no concerns to the objectives of the SP2 Infrastructure zone. Specifically, the first objective directly reflects our view that Cudgen Connection ultimately comprises as a health infrastructure project with related uses. The second objective is also supported and assists ensuring the subject site is maintained for the core purpose of health services facility and educational establishment.

In this regard, it is our view that the SP2 Infrastructure land use zone is fit for purpose and best upholds the Objective and Intended Outcome. Notwithstanding, we do not see the use of the SP1 Special Activities zone as unreasonable and do not specifically object to its use if identified as essential by Council.

Through our meeting of 22 February 2024, and subsequent discussions, we understand greater clarity of outcomes through a legal framework is desired, particularly in relation to residential accommodation type/s, tenure, and delivery. Accordingly, we provide the following draft local clause for Council staff consideration.

Clause 7.XX

(1) The objective of this clause is to:

- a) Ensure the delivery of an integrated health and education centre
- b) Encourage housing affordability through Build-to-Rent housing

(2) This clause applies to development within Cudgen Connection, being Lot 6 DP727425.

(3) Development consent must not be granted to development to which this clause applies unless the consent authority is satisfied that the development, whether or not to be carried out in stages, will include:

- a) a hospital
- b) an educational establishment
- c) residential accommodation managed by a registered community housing provider, not for-profit organisation, State agency, or similar for a period of no less than 25x years and
- d) the number of units managed as per (c), will at all times within the 25x year period exceed the number of remaining units included in the completed development.

(4) Reference to **completed development** means: Any Concept Plan or like Masterplan approved by Council or other relevant Consent Authority.

To assist your consideration of the abovementioned draft clause, we provide the following information:

- We note that the various case study provisions shared prescribed maximum provisions, such as total number of apartments or gross floor area, as well as percentage based outcomes. As was discussed at our meeting of 9 February 2024, the project teams' experience with these provisions has been detrimental to the physical delivery of build to rent product. Enabling the delivery of sustainable build to rent housing by understanding their drivers and opportunities is critical to the project team. As discussed, this is anticipated to be realised by dedicated development/buildings (as opposed to a 'salt and pepper' approach throughout strata building/s) whereby the Community Housing Provider (CHP), State Agency or the like has autonomy of design and dwelling composition.  
Whilst we have not identified prescribing 'maximum' or percentage provisions as the best means of achieving the certainty of outcomes desired, if essential, any further discussions and/or drafting is encouraged to be based on the number of bedrooms. By embodying a quantity of bedrooms as opposed to the number of apartments, or gross floor area, any local clause holds improved flexibility to facilitate design-led outcomes, as well as being dynamic to community and market needs.
- We have 'modelled' the draft clause on a combination of the case studies provided, along with the provisions enforced through the *Tweed Local Environmental Plan 2000* (Tweed LEP 2000) for 'Salt'. Specifically, Schedule 3 of the Tweed LEP 2000 governed land use on Portions 194, 301 and 312, Kings Beach, South Kingscliff to ensure tourist outcomes, including greater quantity of tourist accommodation than residential accommodation.
- The identification of a minimum 25x year period has been identified of key importance from CHPs. Specifically, longer time periods, or perpetuity requirements are identified as counterproductive to funding cycles available and recycling of capital by CHPs. Conversely, a 25x year minimum period enables long-term certainty without impeding the CHPs ability to refresh and recycle housing stock through its lifespan.
- We welcome a sunset clause to apply to the permissibility of residential accommodation should a suitable DA be not approved within 5x years (unless temporary infrastructure limitations are identified).
- We also raise no objection to Council pursuing a housekeeping amendment post approval of any Concept DA for the subject site to:
  - o nominate a minimum or maximum number of dwellings managed as Build-to-Rent
  - o refine height of buildings and/or FSR provisions across the site to match a DA tested and approved form.



As previously discussed, we welcome ongoing dialog to establish a suitable provision/s to provide certainty of outcomes. We also acknowledge this may result in the proponent offering a voluntary Planning Agreement should a local clause not be fit for purpose. Finally, we also note your commentary that no DCP-based provisions are identified as necessary at this time.

### **Water Supply**

The detailed water supply commentary is received and acknowledged. Specific to the request to prepare details of on-site firefighting requirements and provide these on architectural plans, we note this information request does not reflect the detail specified within Attachment C of the Local Plan Making Guideline. We confirm this information, along with other supporting detail, such as architectural plans, will be prepared with the lodgement of DA/s.

We confirm that the water supply demand, as per Tweed Shire Council Development Design Specification 11, referenced within the RFI (and Section 6.1.2 of the Engineering Assessment) is the proposed water demand. We can provide further clarification or information if required.

We understand that based on the proposed yield changes and additional hydraulic modelling undertaken by TSC, larger water conveyance infrastructure is required in comparison to our pre-lodgment discussions. We acknowledge this change and confirm this does not provide a bar to the PP.

The provision of upgraded infrastructure within the correspondence (being along McPhail Avenue from Turnock Street to the Kingscliff Reservoir Complex) is understood. We look forward to working through the particulars of the proponent pursuing or financially contributing towards these upgrades through future DA process/es with Council. We understand that existing framework provisions can facilitate these upgrades (including via developer or capital contributions), however should this not be the case, we welcome your further advice.

### **Stormwater Management**

We confirm that the detailed commentary, including but not limited to downstream sensitivities and Lawful Point of Discharge (LPoD), is received, and acknowledged. These matters will be considered throughout the project process and detailed responses crystallised post PP.

We confirm that the stormwater treatment strategy involves the use of a Gross Pollutant Trap (GPT) and filter (Humegard and Humefilter). The MUSIC assessment contained within the Stormwater Management Plan demonstrates Tweed Shire Council quality requirements are met and neutral or beneficial effect (NorBE) achieved. Notwithstanding the compliance with adopted provisions, any future formal DA will consider additional Water Sensitive Urban Design opportunities, such as street trees with infiltration capacity. It is appropriate to explore these matters within the DA framework as greater project details are resolved.

To clarify, the stormwater strategy has pursued the alternative option within section D5.16(3)(a-c) within Development Design Specification D5. Notwithstanding, we note that sufficient land area is available to accommodate a larger detention tank should the 200L/s/ha target ultimately be prescribed through future DA process/es.

We confirm that overland flow along the western boundary is not sought to be diverted, rather reflect the existing condition. In this regard, we understand that no further works to Tweed Coast Road along the western boundary are proposed and additional survey can now be obtained to confirm the particulars of the overland flow path. Irrespective of the above, preliminary review confirms that either scenario can be accommodated and does not form a bar to the PP. Should our understanding of planned roadworks being complete be incorrect, please advise.

Finally, we clarify that the PP does not require works on adjoining land, nor include physical works.

### **Traffic**

We acknowledge receipt of the commentary provided and confirm the PP does not seek concurrent approval of a development concept, nor formally propose physical works.

The extent of traffic detail provided has directly responded to the NSW Department of Planning, Industry and Environment's - Local Environmental Plan Making Guideline, which explicitly states that engineering designs are not required within the Planning Proposal phase. Accordingly, no road detail, tenure arrangements, infrastructure upgrade details or the like have been prepared at this time. Notwithstanding, the PP package establishes that the Objective and Intended Outcomes can be achieved within the current and planned infrastructure, and upgrades required will be at no cost to Government. Consistent with the applicable planning framework, we confirm future

DA/s to pursue the Cudgen Connection concept will involve further detailed TIA, supporting engineering plans and the consideration of the feedback received within the RFI. Likewise, we confirm consultation with Transport for NSW regarding bus routes has occurred and is ongoing.

We acknowledge that any development post PP may require staging and/or infrastructure upgrades to match the delivery of planned road infrastructure. We welcome further and ongoing engagement with Council and other stakeholders to secure infrastructure delivery and/or use of developer contributions for the locality. Further, we identify notable opportunity in programs, including but not limited to the Regional Precincts and Partnerships Program, to work collaboratively in delivering integrated infrastructure and land use planning outcomes.

We clarify that the 0.29 trip rate per unit utilised within the submitted Traffic Impact Assessment (TIA) reflects the essential worker units being best categorised as 'high density in metropolitan sub-regional centres' rather than 'medium density' trip rate referenced within the RFI. The project team considers the residential accommodation sought to be facilitated by the PP, is notably greater than the medium density classification. In this regard, the RTA Guide to Traffic Generating Developments version 2.2 defines 'medium density residential flat building' as:

*'a building containing at least 2 but less than 20 dwellings, and includes villas, town houses, flats, semi-detached houses, terrace of row houses and other medium density developments.'* (p5-4)

Conversely, the 'high density residential flat buildings' utilised is defined as:

*'A high density residential flat building refers to a building containing 20 or more dwellings. This does not include aged or disabled persons' housing. High density residential flat buildings are usually more than five levels, have basement level car parking and are located in close proximity to public transport services. The building may contain a component of commercial use.'*

Whilst not all residential accommodation within the Cudgen Connection concept is anticipated to comprise 5x storeys or more, each building is anticipated to accommodate greater than 20 dwellings, will involve basement level or undercroft parking and be located in close proximity to public transport services.

Ultimately, we acknowledge and understand Council staff's trepidation regarding both the potential for traffic impact and ensuring appropriate governance mechanisms to foster actual reductions in trip generation. In this regard, we welcome further discussion throughout the PP and subsequent process to achieve clarity and certainty of trips and trip reductions. A current, and significant, limitation to preparing formal engineering detail and governance arrangements is the strategic nature of the PP, as opposed to the clarity and certainty of a formal DA process. Confirming strategic and site-specific merit is essential to warrant progressing the detail of the Cudgen Connection concept and directly reflects the Local Environmental Plan Making Guideline. As established within the PP package, the Objective and Intended Outcomes can be achieved within the current and planned infrastructure and upgrades required will be at no cost to Government. Consistent with the applicable planning framework, the future DA/s to pursue the Cudgen Connection concept will involve further detailed TIA and supporting engineering plans. The future TIA/s will inform matters such as the ultimate development staging, land use and parking composition, traffic infrastructure improvements and the like. Accordingly, it is within this future process that the traffic and engineering detail sought within the RFI is required and will be provided. Again, acknowledging the high-order social and economic role the Cudgen Connection concept would provide to the LGA and subregion, we welcome ongoing dialog to ensure suitable and fit for purpose traffic, transport and accessibility provisions are made.

## Open Space

We acknowledge Council's commentary regarding compliance with existing policies (which were primarily developed pre-approval of the Tweed Valley Hospital), suggested place making outcomes and Section A5 Subdivision Manual of the Tweed Development Control Plan 2008. This commentary will be considered through future concept evolution. Acknowledging the strategic nature and preliminary, pre-Gateway Determination stage of the PP, we clarify no formal decision has been made in relation to dedication of casual open space or otherwise.

In this regard, we welcome working collaboratively with Council staff should dedication of casual open space specifically be sought. These discussions are welcomed, alongside the PP process, noting it is not identified as necessary or appropriate to finalise the specific arrangement of passive open space through the PP. This approach reflects the provisions of the Local Environmental Plan Making Guideline, as well as Council's historic practice.

Irrespective of the final tenure of casual open space, we confirm that:

- The subject site is within walking distance of existing casual open space infrastructure (2x parks 250m and 550m to the northwest, Regional Aquatic Centre 650m to the east). Accordingly, the site is well serviced irrespective of whether additional parkland is provided and dedicated to Council, or held in private ownership.
- The demand generated by the PP is not identified as incompatible with Council's adopted Open Space Strategy 2019-2029, which acknowledges notable increases in population growth and additional open space provision within the Cudgen and Kingscliff localities.
- The PP is not inconsistent with the infrastructure planning identified relevant section 7.11 plans, namely Contributions Plan No. 5 Local Open Space, No. 7 West Kingscliff, and No. 26 Shirewide/Regional Open Space.
- Structured open space is to be pursued via a developer contribution.

In light of the above, the PP has identified the casual open space demand generated by the Cudgen Connection Concept. Through analysis, the demand generated is identified as being compatible and within the casual open space planning detailed within the Open Space Strategy and relevant section 7.11 plans. Funding arrangements are in place through existing section 7.11 plans to acquire additional open space and embellish existing areas of open space within the LGA. Accordingly, it is not appropriate, nor necessary to finalise any open space particulars within the PP, which does not propose any physical works. Notwithstanding, as previous, alongside the PP process, we welcome ongoing discussion should the dedication of casual open space be specifically desired.

## Community Facilities

Acknowledging the strategic nature and preliminary, pre-Gateway Determination stage of the PP, we clarify no formal decision has been made in relation to dedication of community facilities or otherwise. We note Council's advices that should dedication not be proposed, applicable development contribution plans will be applicable. Alongside the PP process, we welcome ongoing discussion should the dedication of community facilities be specifically desired.

## Biodiversity

We acknowledge receipt of the commentary provided and confirm the PP does not seek concurrent approval of a development concept, nor formally propose physical works.

As stated within the PP, the land use zone map has been prepared to reflect the methodology and criteria established within the Northern Councils E Zone Review Final Recommendations Report. We note this approach was reflected by Council within its Tweed Conservation Zone Review – Stage 1 Mapping, which identifies no application of conservation zoning to the subject site. The proposed mapping approach is also identified as consistent with the provisions of the NSW Coastal Design Guidelines 2023.

We note staff's request to amend the Land Use Zoning as per 'Figure 1', however this is not supported as:

- The request is inconsistent with Ministerial Direction 3.4 and the Northern Councils E Zone Review Final Recommendations Report.
- The methodology identified above is identified as fit for purpose.
- Whilst not applicable under Part 3 of the *Environmental Planning and Assessment Act 1979*, the provisions of Section A19 facilitates reduced setbacks in the situation of small, isolated and degraded (low condition) patches. Portions of the land identified and for conservation zoning within Figure 1 align with these criteria and are therefore are inconsistent with the development envelope and setback provisions of Section A19.

In addition, we confirm a planning agreement is not offered or agreed to sterilise the use of any portion of the site for solely environmental protection works as this is not seen to support best practice and integrated outcomes.

We confirm that the detailed commentary regarding ecological survey, bushfire management, groundwater dependant ecosystems and the like as received, and acknowledged.

We confirm the scope of the ecological impact assessment which has been undertaken to inform the PP aligns with the scope prescribed within Attachment C of the LEP Making Guideline. The Basic Ecological Assessment concludes that no threatened flora and fauna species were detected within the subject site during surveys, and the majority of the subject site is dominated by exotic vegetation as the result of past land use. Accordingly, the ecological constraints present do not prevent rezoning and can be managed through the DA process, including upholding the avoid, minimise, offset hierarchy.

The matters raised in the RFI regarding ecological survey, bushfire management, groundwater dependent ecosystems and the like will be further considered throughout the project process and detailed responses crystallised post PP. To confirm, targeted field survey, 5-part test, groundwater investigation and impact assessment are all prescribed requirements of the Biodiversity Development Assessment Report (BDAR). Consistent with the applicable planning framework, a BDAR will be pursued through the future DA process/es and is not identified as an appropriate assessment tool for the PP sought.

### **Acid Sulfate Soils and Dewatering**

We acknowledge receipt of the commentary provided and confirm the PP does not seek concurrent approval of a development concept, nor formally propose physical works. This commentary will be considered through future concept evolution.

To confirm site-specific merit, a Preliminary ASS Assessment has been prepared in accordance with Attachment C of the Local Environmental Plan Making Guideline. This assessment concludes that it is unlikely that ASS would be disturbed by future DA/s, or that groundwater drawdown would occur, impacting off-site ASS.

We confirm that assessment of Clause 7.1 of the *Tweed Local Environmental Plan 2014* is not applicable to the current PP process, however will form part of any future DA process/es for physical works. We also confirm that any future DA process/es for physical works will involve detailed groundwater investigations if/where matters, such as but not limited to groundwater interception and dewatering, occur.

### **Amenity**

We acknowledge receipt of the commentary provided and confirm the PP does not seek concurrent approval of a development concept, nor formally propose physical works. This commentary will be considered through future concept evolution.

The subject site has not been identified as notably constrained or affected by external noise, lighting or other amenity impacts. Whilst Tweed Coast Road is identified as a noise source which may impact upon a portion of the subject site, its impact is not identified as a bar to the PP. As evidenced by existing development within immediate proximity, any noise impacts can be mitigated through setbacks and/or built acoustic treatments. Likewise, the Objective and Intended Outcomes of the PP is not identified as limiting the functional traffic capacity of Tweed Coast Road.

We confirm that noise, lighting and other amenity impacts will form part of any future DA process/es for said physical works. The provision of these assessments within the PP is not identified as consistent with the Local Environmental Plan Making Guideline as no significant noise or lighting sources have been identified.

### **Contaminated Land**

We acknowledge receipt of the commentary provided and confirm the PP does not seek concurrent approval of a development concept, nor formally propose physical works.

We note that the methodology followed within the Detailed Site Investigation mirror the Auditor approved approach for the Tweed Valley Hospital site, and the land use across the broadacre cropping areas of the Cudgen Plateau is identified as very consistent. We confirm that a total of 88x primary samples were collected (composited into 22), reflective of a widespread assessment. Further, in broadacre areas where HMC composited the analysis did not record any detections of the semi-volatile organochlorines. Finally, no compositing was undertaken in any of the non-broadacre "hotspot" areas.

Accordingly, the Detailed Site Investigation is identified as being undertaken as per currently endorsed guidelines, including those for market gardens and orchards. We remain satisfied that the PP is consistent with Local Planning Direction 4.4 Remediation of Contaminated Land. Notwithstanding, we note that the provisions of *State Environmental Planning Policy (Resilience and Hazards) 2021*, namely Chapter 4 Remediation of Land will apply to any future DA/s.

We trust this information will assist Council staff with their assessment of the strategic and site-specific merit of the PP. Should you have any questions or queries regarding this submission, please do not hesitate to contact Planit Consulting's Kingscliff Office on (02) 6674 5001. Likewise, as per our previous correspondence, we welcome the opportunity to meet and discuss the contents of this correspondence, as well as the PP more generally, prior to staff finalising a report to the 2 May 2024 Planning Committee meeting.

Yours sincerely



**Josh Townsend**  
Senior Town Planner

**Our Reference:** J7594

Thursday, 18 April 2024

**Tweed Shire Council**

Attention: Matthew Zenkteler

Via email: [MZenkteler@tweed.nsw.gov.au](mailto:MZenkteler@tweed.nsw.gov.au)

Dear Matt,

**Planning Proposal PP-2023-2669 'Cudgen Connection'**  
**Clarification and Confirmation of Matters**

I refer to your correspondence of 9 February 2024, as well as subsequent emails and discussions since 3 April 2024 in relation to the abovementioned Planning Proposal (PP). We trust this information will assist Council staff with their assessment of the strategic and site-specific merit of the PP.

**Water Supply**

We confirm that the water augmentation identified as required in Council's previous request for further information is understood and will be undertaken at no cost to Government.

To confirm our understanding, the provision of upgraded infrastructure is required along McPhail Avenue from Turnock Street to the Kingscliff Reservoir Complex, as well as portions along Cudgen Road as identified in blue within the Figure below. If our understanding of works required is not correct, please advise at the earliest opportunity.

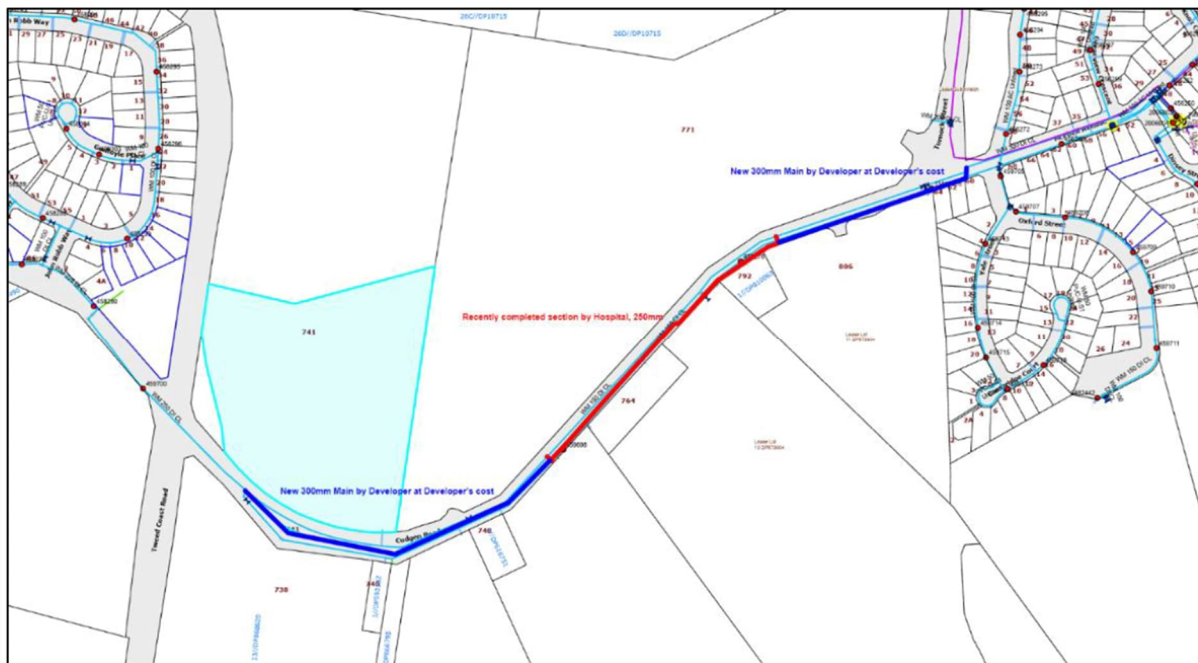


Figure 1 – Water Supply Augmentation Works

We understand that the required upgrades can be pursued via sections 305/306/307 of the *Water Management Act 2000*. Should Council staff identify that an alternate pathway is necessary, or hold concern that additional/formal commitments are necessary, we welcome further discussion.



## Wastewater

We confirm that the PP does not seek/require any wastewater loading above and beyond 25.188L/s. We also note that if the developer seeks to increase their loading in the future, this will be provided at no cost to Tweed Shire Council.

## Height of Buildings

We welcome the Maximum Height of Buildings map within the PP to be updated to reflect 4x distinct 'precincts' across the subject site, as per the attached Building Height Plan.

The extent of precinct is defined by the spine roads, with the taller building height applying 'across' the road. This approach provides approximately 20m of 'flexibility' to support any minor revisions needed when progressing into DA detailed design. Likewise, the approach provides greater clarity and certainty of building heights, which will taper down towards public domain areas of Tweed Coast and Cudgen Roads. For the purpose of the PP, please ignore the references to 'NGL', we acknowledge the building heights will be measured from Existing Ground Level as per the *Tweed Local Environmental Plan 2014* and *Standard Instrument (Local Environmental Plans) Order 2006*.

## Additional Permitted Uses

We raise no objection to also including Recreation Area and Hospital as additional permitted uses for the subject site, in addition to those land use terms already identified within the Request for PP.

We note that the inclusion of Recreation Area confirms our commentary that notwithstanding the PPs compliance with the relevant provisions identified in the Local Environmental Plan Making Guideline (namely Questions 3 and 10), relevant Practice Notes, contemporary practice, we are aware that any future DA/s will be subject to the planning framework within Part 4 of the *Environmental Planning and Assessment Act 1979*, namely the provision of open space as per the Tweed Development Control Plan 2008 and/or Section 7.11 Developer Contributions Plans. We welcome the opportunity to advance the open space strategy for the subject site post any Gateway Determination.

## Open Space

To further clarify our open space assessment of the PP, please see a detailed assessment of open space as outlined within the Local Environmental Plan Making Guideline (the Guideline) attached. In summary, the assessment concludes:

- The PP is identified as consistent with the North Coast Regional Plan 2041 (NCRP), specifically:
  - The Tweed Shire Council Open Space Strategy 2019 - 2029 (OSS) satisfies Objective 19 Public spaces and green infrastructure support connected and healthy communities.
  - The PP is consistent with the OSS

Accordingly, the open space considerations of Question 3 within the Guideline are identified as satisfied.

- The PP includes an assessment to establish the demand for open space, being 7,905m<sup>2</sup> of structured open space and 6,498m<sup>2</sup> of casual open space.
- The OSS identifies an existing surplus within the Mid Coast area, which the subject site is located within.
- The projected demand generated by the PP is less than the to 2026 surplus identified in the OSS.
- The PP satisfies the 'Guiding Principles' of the OSS, particularly with regard to accessibility.
- The PP does not create any bar to the provision of open space to meet its demand and ensure high quality amenity and outcomes for future residents and visitors.
- The subject site is within existing, fit-for-purpose, developer contributions plans for open space.

Accordingly, the open space considerations of Question 10 within the Guideline are identified as satisfied.

As Questions 3 and 10 are satisfied, no inconsistencies related to open space are identified in relation to the remaining questions within the Guideline, the PP is considered to satisfy the strategic and site-specific merit tests for a Planning Proposal.

In addition, we also identify:

- The Guideline does not require the identification and zoning of a public open space.
- Practice Note PN10-001 advises to avoid duplicating the provisions of State Environmental Planning Policy (Transport & Infrastructure) 2021 when preparing an LEP. We note that planning pathways for Parks and other public reserves are provided irrespective of land use zoning within *State Environmental Planning Policy (Transport & Infrastructure) 2021*.
- We are not aware of any adopted Council policy requiring identification and zoning of public open space within PPs.
- No PP to rezone land for urban purposes within the Tweed LGA for the past 15+ years has specifically identified and zoned land for public open space. Through this period, best practice has involved applying an 'urban' land use zone to facilitate land subdivision and dedication of land to Council through a DA/s. Beyond being consistent with the applicable framework, this process avoids inadvertently triggering the *Land Acquisition (Just Terms Compensation) Act 1991*. Finally, post DA/s, housekeeping amendments are undertaken routinely to specifically zone land dedicated for public open space accordingly. Comparable case studies include:
  - Mooball Village Expansion - Similar projected population (580 people, compared to 575 in the PP), no public open space zone applied.
  - Area E Terranora - significantly higher projected yield (approximately 4,000 people), no public open space zone applied
  - 'Stage 2' Seabreeze Estate – Similar projected population (approximately 480 people, compared to 575 in the PP), no public open space zone applied.
- The PP does not seek consent for any formal works, land dedication, nor direct open space demand. Rather, the PP is limited to establishing the Objective and Intended Outcomes through land use zoning and development standard provisions.
- Future DA/s to properly realise the Objective and Intended Outcomes will create direct open space demand and include detailed open space arrangements and outcomes.

In light of the above, we consider that the PP satisfies the requirements and expectations established within Part 3 of the *Environmental Planning and Assessment Act 1979*, the Guideline and supporting Practice Notes. Further, we have not identified the PP as containing any inconsistency with Council's adopted open space framework.

Notwithstanding the PPs compliance with the relevant provisions, we are aware that any future DA/s will be subject to the planning framework within Part 4 of the *Environmental Planning and Assessment Act 1979*, which includes but is not limited to the Tweed Development Control Plan 2008, and supporting section 7.11 Developer Contributions Plans. In this regard, the PP does not introduce any provisions which result in any waiver to these provisions. The delivery of DA matters has not been finalised at this time and will be worked through to support any future DA/s. We welcome collaboration with Council staff regarding open space, post any positive Gateway Determination, through to the DA process/s phase.

To reaffirm, and provide clarification for the Cudgen Connection Concept itself (being outside of the PP):

- No finalised strategy regarding the design and other particulars for open space is in place, for the reasons identified above.
- The PP creates no bar to achieving suitable quantity and quality of open space on the site.
- We understand the planning framework prescribes the provision of public open space within subdivisions (as per Section A5) and includes specifications for public open space and its dedication to Council.
- Should any public open space generated by future DA/s not be physically accommodated on-site to Council's satisfaction, the shortfall will be met through developer contributions consistent with the rates adopted within Contributions Plan No. 7 West Kingscliff and any other applicable developer contribution plan.
- The Cudgen Connection Concept will continue to evolve in collaboration with key stakeholders, including but not limited to Council's open space staff.



- This process, including detailed open space design and assessment, will be further facilitated post any positive Gateway Determination, and will inform the formal open space arrangements within future DA/s. Until a positive Gateway Determination is received, there is no nexus or demand for open space.
- As identified within the initial scoping study, we welcome discussions with Council staff to identify any bespoke open space outcomes which share synergies with the health and education theme of the precinct, including but not limited to swimming pool/s and/or skate park.
- Reflective of regular practice in preparing future DA/s, should limitations to providing open space be identified (i.e. insufficient quantity and equivalent developer contribution), the DA proposal/s for Cudgen Connection will evolve to achieve a suitable equilibrium. By way of example, this may include:
  - Reducing population yield (and therefore open space demand), or
  - Replacing currently identified supporting uses (such as retail and/or childcare) to create larger open space areas.

The abovementioned approach is identified as directly aligning with the adopted planning framework and ensures that open space design and provision occurs with a direct nexus to demand.

For further information specific to Questions 3 and 10 of the Guideline, please see overpage.

We trust this information will assist Council staff with their assessment of the strategic and site-specific merit of the PP. Should you have any questions or queries regarding this submission, please do not hesitate to contact Planit Consulting's Kingscliff Office on (02) 6674 5001. Likewise, as per our previous correspondence, we welcome the opportunity to meet and discuss the contents of this correspondence, as well as the PP more generally, prior to staff finalising a report to the 2 May 2024 Planning Committee meeting.

Yours sincerely



**Josh Townsend**  
Senior Town Planner

### Question 3 – Assessment of North Coast Regional Plan 2041 Objective 19 – Public spaces and green infrastructure support connected and healthy communities

NCRP 2041	Planning Response
<p><b>Strategy 19.1</b></p> <p><b>Councils should aim to undertake public space needs analysis and develop public space infrastructure strategies for improving access and quality of all public space to meet community need for public spaces. This could include:</b></p> <ul style="list-style-type: none"> <li>• drawing on community feedback to identify the quantity, quality and the type of public space required</li> <li>• prioritising the delivery of new and improved quality public space to areas of most need</li> <li>• considering the needs of future and changing populations</li> <li>• identifying walkable and cycleable connectivity improvements and quality and access requirements that would improve use and enjoyment of existing infrastructure</li> <li>• consolidating, linking and enhancing high quality open spaces and recreational areas</li> <li>• working in partnership with local Aboriginal communities to develop bespoke cultural infrastructure which responds to the needs of Aboriginal communities and facilitates continued cultural practices.</li> </ul>	<p>To guide and deliver a public open space network for the Tweed LGA, Tweed Shire Council has adopted the Open Space Strategy 2019–2029 (OSS). The OSS was developed with community consultation and included demand and supply analysis. The OSS includes a Vision, Guiding Principles, and is accompanied by an Implementation Plan. Accordingly, the OSS satisfies Strategy 19.1 of the North Coast Regional Plan 2041.</p> <p>Within the OSS, the subject site is identified within the ‘Mid Coast – Casuarina and Cudgen’ local profile area. Through supply analysis, key findings for the profile area includes but not limited to:</p> <ul style="list-style-type: none"> <li>• <i>The area is currently well supplied with passive open space (parks) and active open space (sports fields), which will continue to be the case until 2026.</i></li> <li>• <i>All residents are within 500m of an open space</i></li> <li>• <i>In Cudgen, there is one neighbourhood park but access to the park is poor and the facilities are older in style.</i></li> <li>• <i>The area is well supplied with neighbourhood and district playgrounds.</i></li> <li>• <i>This area is forecast to undergo significant growth and population increases, predominantly within the Kings Forest Urban Release Area. Additional open spaces and recreation facilities will be provided for this release in line with the relevant planning documents</i></li> <li>• A projected surplus of 5.99ha of casual open space at 2026.</li> <li>• A projected surplus of 4.04ha of structured open space at 2026.</li> </ul> <p>As detailed as identified within the Social and Community Needs Assessment, the projected demand of the PP includes 7,905m<sup>2</sup> of structured open space and 6,498m<sup>2</sup> of passive open space. These demands are less than the identified surplus identified in the OSS. Likewise, the subject site is located within 500m walking distance of open space, specifically Alan McIntosh Park. Accordingly, the PP is identified as being compatible and consistent with the OSS.</p> <p>Notwithstanding the above, it is understood that once moving past the PP phase and when a legislative framework is place which facilitates ‘real’ open space demand, corresponding supply is required. This supply may comprise land dedication, payment of development contributions under section 7.11 of the <i>Environmental Planning and Assessment Act 1979</i>, or a combination of each. No bar has been identified to achieving high quality outcomes within future DA/s. Further, we confirm that as these arrangements are not a matter for a PP, as per the Local Environmental Plan Making Guideline (the Guideline) and supporting Practice Notes.</p>
<p><b>Strategy 19.2 Public space improvements and new development should consider the local conditions, including embracing opportunities for greening and applying water sensitive urban design principles.</b></p>	<p>The PP is identified as leveraging local conditions, namely its co-location with the Tweed Valley Hospital.</p> <p>The PP is not identified as creating any barriers to facilitating ‘green’ outcomes and water sensitive urban design principles within any future development. Likewise, the favourable subtropical climate provides an ideal platform to facilitate an integrated, walkable precinct for workers, visitors and residents, inclusive of green infrastructure.</p>

<p><b>Strategy 19.3 Encourage the use of council owned land for temporary community events and creative practices where appropriate by reviewing development controls</b></p>	<p>The subject site of the PP does not include Council owned land.</p> <p>Notwithstanding, post any positive Gateway Determination, we welcome further discussions with Council staff regarding the 'Plaza' detailed within the Cudgen Connection concept being dedicated to Council and facilitating temporary community events and creative practices. Pursuit of these activation activities will support both the community and the vibrancy of the health and education precinct.</p>
<p><b>Strategy 19.4 Local environmental plan amendments that propose to reclassify public open space must consider the following:</b></p> <ul style="list-style-type: none"> <li>• the role or potential role of the land within the open space network</li> <li>• how the reclassification is strategically supported by local strategies such as open space or asset rationalisation strategies</li> <li>• where land sales are proposed, details of how sale of land proceeds will be managed the net benefit or net gain to open space.</li> </ul>	<p>The PP does not propose to reclassify public open space.</p> <p>Irrespective, the PP is not identified as disrupting the local open space network by generating unreasonable or significantly alternate demands. Specifically, the OSS identifies a surplus of structured and passive open space in the locality, likewise, the subject site is well located to existing open space areas.</p>

#### Question 10 – Has the planning proposal adequately addressed any social and economic effects?

Considerations	Planning Response
<p><b>Generally, this applies where the planning proposal includes development that will, or is likely to, require the provision of, or increase the demand for, public facilities and services</b></p>	<p>The PP provides a legislative framework which, in turn through future DA/s, will require the provision of/ increase the demand for public facilities and services. Specific to open space, as identified within the Social and Community Needs Assessment, the projected demand of the PP includes 7,905m<sup>2</sup> of structured open space and 6,498m<sup>2</sup> of casual open space.</p>
<p><b>Address whether existing infrastructure is adequate to serve or meet the needs of the proposal and how any predicted shortfall in infrastructure provision could be met</b></p>	<p>Within the OSS, the subject site is identified within the 'Mid Coast – Casuarina and Cudgen' local profile area. Through supply analysis, key findings for the profile area includes but not limited to:</p> <ul style="list-style-type: none"> <li>• <i>The area is currently well supplied with passive open space (parks) and active open space (sports fields), which will continue to be the case until 2026.</i></li> <li>• <i>All residents are within 500m of an open space</i></li> <li>• <i>In Cudgen, there is one neighbourhood park but access to the park is poor and the facilities are older in style.</i></li> <li>• <i>The area is well supplied with neighbourhood and district playgrounds.</i></li> <li>• <i>This area is forecast to undergo significant growth and population increases, predominantly within the Kings Forest Urban Release Area. Additional open spaces and recreation facilities will be provided for this release in line with the relevant planning documents</i></li> <li>• A projected surplus of 5.99ha of passive open space at 2026.</li> <li>• A projected surplus of 4.04ha of structured open space at 2026.</li> </ul>

Accordingly, it is identified that existing infrastructure within the locality adequately serves the quantity of open space projected for the PP. Further, the subject site is located within multiple existing open space facilities, including:

- Casual Open Space (Alan McIntosh Park) located within Cudgen Village approximately 250m west (and within 400m walking distance of the subject site)
- Casual open space within Kings Coast, approximately 550m northwest
- Tweed Regional Aquatic Centre – Kingscliff 650m east
- Cudgen Sports Field 650m west.
- Harry Hanson Park (Structured Open Space) 1.3km east.

In discussions with Council staff, we understand that the future provision of structured open space is not essential, noting the scale of demand generated (being 7,905m<sup>2</sup>, or the equivalent to 1x playing field). Notwithstanding, we also understand provision of alternate forms of structured open space to sportsfields, such as a swimming pool or skate park, may be suitable. We welcome further discussion on this matter post any positive Gateway Determination.

Through formal correspondence and in discussions with Council staff, we also understand that concern is held regarding the formal provision of casual open space, including the convenience of park access, size and embellishment of Alan McIntosh Park.

In response, we confirm:

- The Tweed Coast Road and Cudgen Road intersection is signalised and includes dedicated pedestrian pathways and signals. Accordingly, crossing Tweed Coast Road is not identified as a significant barrier to utilising the existing parkland.
- The limitations of the existing park and identify potential for significant benefit from focussed expenditure of developer contributions should casual open space generated ultimately not be provided on the subject site, or a remaining shortfall be identified.
- Understanding that future DA process/s will include detailed design and assessment of open space provisions.
- Finalising detailed arrangements are not a matter for a PP, as per the Local Environmental Plan Making Guideline (the Guideline) supporting Practice Notes, or Council's OSS.
- No finalised strategy regarding the design and other particulars for open space is in place.
- No bar has been identified to achieving high quality outcomes within future DA/s.

In addition to the above, Council's adopted Guiding Principles for open space include, but are not limited to:

- *Accessibility - Open spaces are within walking distance of where people live; and*
- *Equity - Quality open spaces, sport and recreation facilities are equitably distributed and funded across the Shire.*

Accordingly, we do not identify any inconsistency within the PP to the adopted and applicable framework. Further, the PP provides ample scope to supplement the existing open space framework. Finally, this scope is directly and best addressed within the future DA process/s.

<p><b>Undertake studies required to identify the extent of any infrastructure shortfall, potential mechanisms or strategies to address any shortfall and which agencies have been consulted as part of that process</b></p>	<p>The PP has identified no direct shortfall of open space generated by the PP. Notwithstanding, the PP does not contain provisions which limit the provision of open space resulting from future DA/s post PP, such as dedication of causal open space.</p> <p>The PP does not identify or 'zone' any tract of land exclusively for public open space. This approach is consistent with the Guideline, supporting Practice Notes and longstanding practice of Tweed Shire Council.</p> <p>Notwithstanding the above, the Proponent is aware that more detailed open space provisions will be applicable within any future DA/s, as outlined within the planning framework.</p>
<p><b>The proponent/PPA is to identify what local and regional infrastructure may be needed</b></p>	<p>The quantity of structured and casual open space has been identified. This infrastructure will be provided at no cost to Government through future DA process/s, by way of land dedication, developer contributions or a combination of both.</p>
<p><b>For planning proposals likely to place additional demands on public infrastructure, it is important to undertake consultation with the public authorities and government agencies responsible for the provision of that infrastructure. The Gateway determination will confirm whether a local contributions plan is required to be exhibited with the planning proposal and require regular feedback on the progress of finalizing an infrastructure strategy and high-level costs</b></p>	<p>The subject site is located within the application area of Contributions Plan No. 7 – West Kingscliff (CP 7). CP 7 provides a framework to secure future structured and casual open space types and does so through a combination of land dedication and/or financial contribution. Broadly, land dedication is sought where greenfield subdivision is envisaged, whilst financial contribution is pursued in 'infill' scenarios.</p> <p>It is noted that:</p> <ul style="list-style-type: none"> <li>• The financial contribution for structured and casual open space is based on an acquisition and embellishment cost of \$858,000 per hectare.</li> <li>• Land areas for both structured and casual open space are calculated based on projected population.</li> <li>• CP 7 identifies <i>'These projections are indicative only and subject to variation in relation to the ultimate developable area, dwelling type composition and density.'</i></li> <li>• No specific acquisition plan or land is identified. This affords flexibility for Council is acquiring fit-for-purpose land for open space at developers cost.</li> <li>• CP 7 also identifies <i>'Passive open space is to be dedicated at the time of subdivision unless the proposed development is for redevelopment of an existing lot in which case a monetary contribution is required.'</i></li> </ul> <p>Acknowledging the above, CP 7 is identified as having significant and suitable flexibility to encompass the PP where necessary. Accordingly, no new contribution plan is identified as essential, nor is amendment to CP 7 identified as essential.</p> <p>As detailed throughout this assessment, the Proponent is aware that the planning framework which applies to any future DA/s includes prescribed open space provisions. Notwithstanding the existing surplus of open space within the locality of the subject site, generated open space demands will be addressed via detailed open space particulars at that time. This reflects the applicable planning framework.</p>
<p><b>For planning proposals, a local contributions plan may be required. Liaison with the council is necessary</b></p>	<p>As detailed above, CP 7 is identified as having significant and suitable flexibility to encompass the PP where necessary. Accordingly, no new contribution plan is identified as essential, nor is amendment to CP 7 identified as essential.</p> <p>Accordingly, this provision is considered satisfied.</p>



