



**TWEED**  
SHIRE COUNCIL

**Mayor:**

**Councillors:** P Allsop  
R Byrnes  
C Cherry  
R Cooper  
K Milne  
J Owen  
W Polglase

# Agenda

## **Planning Committee Meeting Thursday 17 November 2016**

held at **Council Chambers, Murwillumbah Civic & Cultural Centre,**  
**Tumbulgum Road, Murwillumbah** commencing at 5.00pm

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 - SECT 79C**  
**79C Evaluation**

(1) Matters for consideration-general In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

(a) the provisions of:

- (i) any environmental planning instrument, and
- (ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and
- (iii) any development control plan, and
- (iiia) any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and
- (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and
- (v) any coastal zone management plan (within the meaning of the Coastal Protection Act 1979 ),

that apply to the land to which the development application relates,

- (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,
- (c) the suitability of the site for the development,
- (d) any submissions made in accordance with this Act or the regulations,
- (e) the public interest.

**Note:** See section 75P (2) (a) for circumstances in which determination of development application to be generally consistent with approved concept plan for a project under Part 3A.

The consent authority is not required to take into consideration the likely impact of the development on biodiversity values if:

- (a) the development is to be carried out on biodiversity certified land (within the meaning of Part 7AA of the Threatened Species Conservation Act 1995 ), or
- (b) a biobanking statement has been issued in respect of the development under Part 7A of the Threatened Species Conservation Act 1995 .

(2) Compliance with non-discretionary development standards-development other than complying development If an environmental planning instrument or a regulation contains non-discretionary development standards and development, not being complying development, the subject of a development application complies with those standards, the consent authority:

- (a) is not entitled to take those standards into further consideration in determining the development application, and
- (b) must not refuse the application on the ground that the development does not comply with those standards, and
- (c) must not impose a condition of consent that has the same, or substantially the same, effect as those standards but is more onerous than those standards,

and the discretion of the consent authority under this section and section 80 is limited accordingly.

- (3) If an environmental planning instrument or a regulation contains non-discretionary development standards and development the subject of a development application does not comply with those standards:
  - (a) subsection (2) does not apply and the discretion of the consent authority under this section and section 80 is not limited as referred to in that subsection, and
  - (b) a provision of an environmental planning instrument that allows flexibility in the application of a development standard may be applied to the non-discretionary development standard.

**Note:** The application of non-discretionary development standards to complying development is dealt with in section 85A (3) and (4).

- (4) Consent where an accreditation is in force A consent authority must not refuse to grant consent to development on the ground that any building product or system relating to the development does not comply with a requirement of the Building Code of Australia if the building product or system is accredited in respect of that requirement in accordance with the regulations.
- (5) A consent authority and an employee of a consent authority do not incur any liability as a consequence of acting in accordance with subsection (4).
- (6) Definitions In this section:
  - (a) reference to development extends to include a reference to the building, work, use or land proposed to be erected, carried out, undertaken or subdivided, respectively, pursuant to the grant of consent to a development application, and
  - (b) "non-discretionary development standards" means development standards that are identified in an environmental planning instrument or a regulation as non-discretionary development standards.

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## Items for Consideration of Council:

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## REPORTS THROUGH THE GENERAL MANAGER

### REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

#### 1 [PR-PC] Planning Proposal PP10/0006 - 225 Terranora Road, Banora Point

**SUBMITTED BY:** Strategic Planning and Urban Design

**FILE REFERENCE:** PP10/0006

Validms



## Civic Leadership

### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- |       |  |
|-------|--|
| 1     | Civic Leadership   |
| 1.5   | Manage and plan for a balance between population growth, urban development and environmental protection and the retention of economical viable agriculture land  |
| 1.5.2 | Land use plans and development controls will be applied and regulated rigorously and consistently and consider the requirements of development proponents, the natural environment and those in the community affected by the proposed development |

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### SUMMARY OF REPORT:

This report seeks Council's endorsement of an approach to proceed with consideration of a request to prepare a planning proposal for Lot 16 DP 856265 at 225 Terranora Road, Banora Point that was first received in April 2015.

The Proponent's application form stated described the proposal as a 'rezoning to allow large lot residential development', necessitating a rezoning of part of the land from 7(d) Environmental Protection (Scenic/Escarpment) under *Tweed Local Environmental Plan 2000* to R5 Large Lot Residential under *Tweed Local Environmental Plan 2014* to permit residential lots of 0.4ha or greater. The most current iteration of the Proponent's proposal comprises a 16 lot community title subdivision in which many of the lots depicted on their 'concept plan' are closer to 0.25ha.

Whilst the site comprises an area of cleared land it was previously operated as a hard rock quarry, and in addition to the potential for significant scenic impact from its development within the escarpment, there other significant matters that Council must be satisfied can be adequately addressed, including:

1. Water supply
2. Waste water disposal;
3. Potential for contamination from quarry operations and fill material;
4. Geotechnical stability of the land, and
5. Compliance action in respect of the Illegal dwellings and fill material deposited on the land.

The impact on the scenic landscape amenity, essential infrastructure, and history of past activity and planning approvals for this land are discussed in detail within the report. On that basis of that initial assessment Council officers are of the view that an appropriate planning response for this land, in part to better ensure an appropriate level of management and rehabilitation, is to allow a rezoning to permit a land subdivision of no more than 2 lots.

Further, as there are two illegal dwellings and fill material deposited on the land without the necessary planning approval it is recommended that compliance action on these matters be finalised prior to the planning rezoning request being further considered or advanced.

A second planning proposal has been received for a similar change of zoning off Winchelsea Way approximately one kilometre to the west, which is also reported to the November 2016 Planning Committee meeting.

While both planning proposals seek to extend the R5 Large Lot Residential zone to cover grassland within the escarpment, an assessment of the cumulative impact on the scenic amenity of the locality and value of the escarpment in defining the identity of the Tweed is required, along with confirmation of Council's position on development within or adjoining the escarpment.

The Minister for Planning's administrative review procedures for 'Rezoning Review', are available to the Proponent as the planning request has been with Council in excess of 90 days; and it is in the best interest of all parties therefore that the officer's report documents the matters and issues and provides an opinion on the suitability of the proposal requested should the Proponent wish to seek a review.

The premise for the drafting of the recommendations reflect the report's conclusion that an appropriate planning response would limit rather than maximise development of the land, and therefore not support the extent of the Proponent's development proposal in either the original request nor subsequent amendment proposing a 100% increase in density. They are drafted such that support for a rezoning by Council is conditional upon the proponent affirming the reduced investigation area of the proposal, and subject to the compliance matters being concluded.

#### **RECOMMENDATION:**

**In respect of Planning Proposal PP10/0006 for Lot 16 DP 856265 at 225 Terranora Road, Banora Point, the Council endorses that:**

- 1. The planning request for a zoning redefinition prepared by Planit Consulting Ltd is not supported in so far as it relates to the general extent of the proposed rezoning;**
- 2. A reduced area of rezoning definition and subdivisional capability is supported to the extent that it permits only a two lot subdivision, and for the purpose of residential use;**
- 3. The Proponent is to confirm their acceptance of the reduced area for rezoning investigation and two lot subdivision capability within 21 days of the date of this resolution taking effect;**

- 4. On receipt of the Proponent's acceptance the Director Planning and Regulation is to prepare and submit a Planning Proposal for a Ministerial Gateway Determination for a zoning redefinition based on the reduced land area and restricted subdivision capability, but not before the compliance matters relating to the illegal dwelling(s) and imported fill material have been concluded to the Councils satisfaction; and**
- 5. Should the Proponent fail to confirm their acceptance within the time required or notifies of their non-acceptance at any prior time the Director Planning and Regulation pursuant to s.10A of the *Environmental Planning and Assessment Regulation 2000* is to notify the proponent that their planning request is not supported.**
- 6. The Director Planning and Regulation is to take all necessary and reasonable measures to ensure that any breach of planning laws in respect of the illegal dwelling(s) and imported fill material are rectified in accordance with those laws and where appropriate the land is to be reinstated to its natural condition prior to those works or buildings occurring.**



## **REPORT:**

On 7 May 2015 a request was received for Council to prepare a planning proposal for part of Lot 16 DP 856265 at 225 Terranora Road from 7(d) Environmental Protection (Scenic/Escarpment) under *Tweed Local Environmental Plan 2000* (Tweed LEP) to allow for large lot residential development.

This report seeks Council's endorsement of an approach to proceed with consideration of this planning proposal and compliance matters.

Council is in receipt of two requests to prepare planning proposals seeking a similar outcome on land within the escarpment in close proximity to each other. This report should be read in conjunction with the report for planning proposal PP16/0002 Winchelsea Way, Terranora, also presented to the November 2016 Planning Committee Meeting.

### **The site and surrounding environment**

The site lies off Terranora Road, and is accessed via a battle-axe handle as shown in Figure 1 and has previously been operated as a hard rock quarry (Figure 2). The quarry is no longer operational and has been maintained under grass as seen in Figure 3.

While the total area of the allotment is approximately 10.04 hectares, the area of cleared land formerly occupied by the quarry covers approximately 3.6 hectares and is highly visible.

The allotment extends from Terranora Road to the north, to River Road which runs along the banks of the Tweed River to the south.

The majority of the site is zoned Deferred Matter under Tweed LEP 2014, which means that the 7(d) Environmental Protection (Scenic/escarpment) zone under Tweed LEP 2000 still applies. A small area of the north eastern corner is zoned R5 Large Lot Residential, and a small area on the southern access is zoned RU2 Rural Landscape under LEP 2014, as seen in Figure 4.

The area of land subject of this request covers the northern portion of the property (the site) which is predominantly cleared land and formerly occupied by the quarry. The site lies within the escarpment surrounding the Tweed Valley, to the south of Terranora Road.

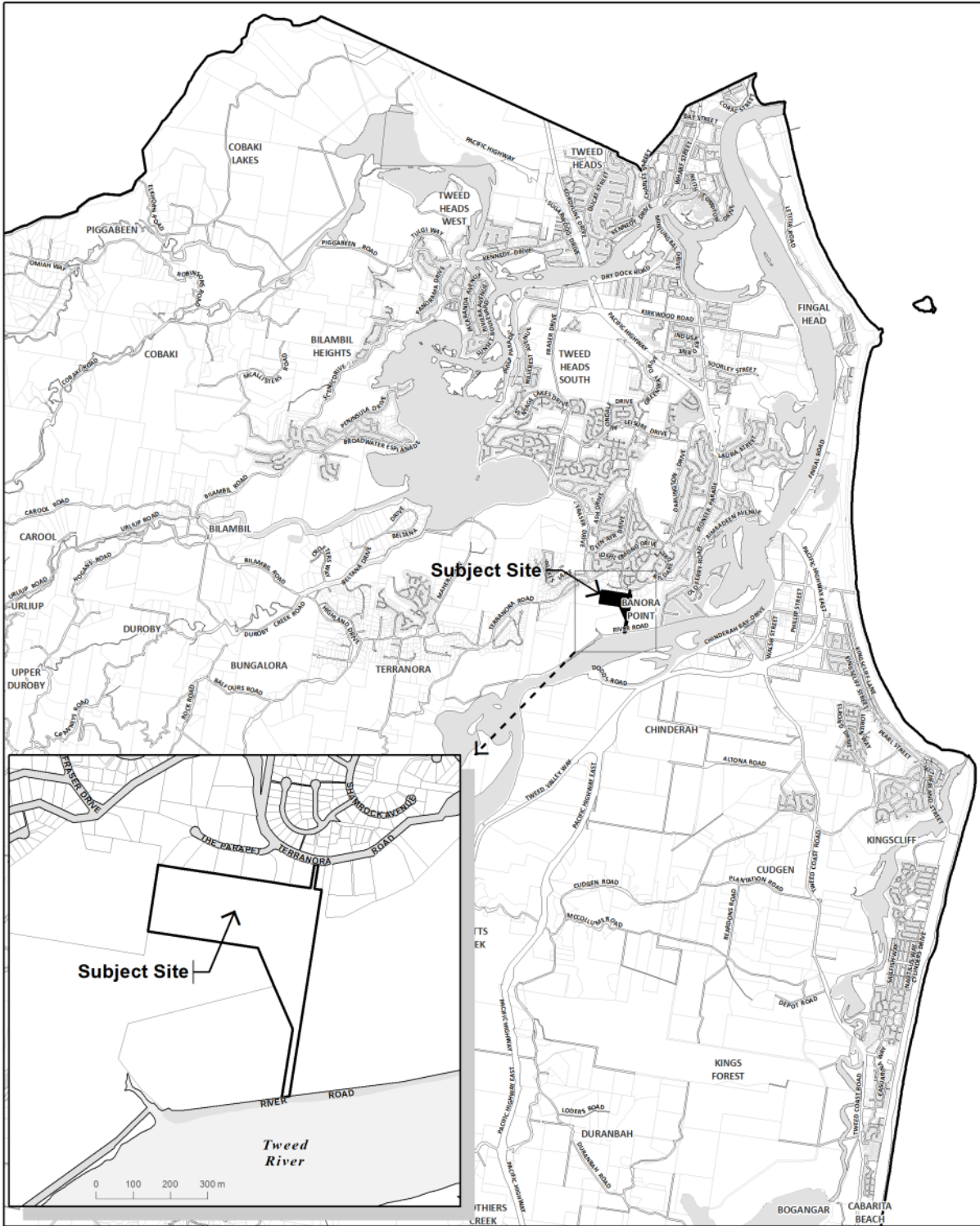
The site is not and is seemingly incapable of being connected to Council's reticulated water and sewer systems.

### **The request**

The proponent has requested that Council support a rezoning of the site which would require the site to be rezoned to R5 Large Lot Residential under Tweed LEP 2014. The site is currently zoned 7(d) Environmental Protection (Scenic/Escarpment) under Tweed LEP 2000. Current and proposed zonings can be seen in Figures 4 and 5 respectively.

The original request of May 2015 proposed that Building Heights, Floor Space Ratio, Acid Sulfate Soil and Minimum Lot Size maps be amendment to reflect standard LEP 2014 provisions for the R5 zone; however the proponent is subsequently seeking a minimum lot size of 2000 square metres in a 16 lot community title development, as seen in Figure 6.

Figure 1: Locality Plan



pp no. | 10/0006  
revised | 15/09/2016

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Map Projection: Universal Transverse Mercator  
Horizontal Datum: Geoidetic Datum of Australia 1994  
Grid: Map Grid of Australia, Zone 56

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**Locality Plan  
Planning Proposal**

**Affected Properties: Lot 16 DP 856265  
No.225 Terranora Road, Terranora**

**Cadastral:**  
Base Data 13/09/2016  
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Addendum Data 15/09/2016  
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Filepath: Z:\ESRI\PROJ\POLICIES & STRATEGIES\PLANNING PROPOSALS\TEMPLATES\LocalityPlan\_75k.mxd Author: J. Batechelor - Strategic Planning & Urban Design Unit Date Printed: 15 September, 2016

**Figure 2: Aerial photo of quarry in operation in 1987 (Terranora Road in top right corner)**

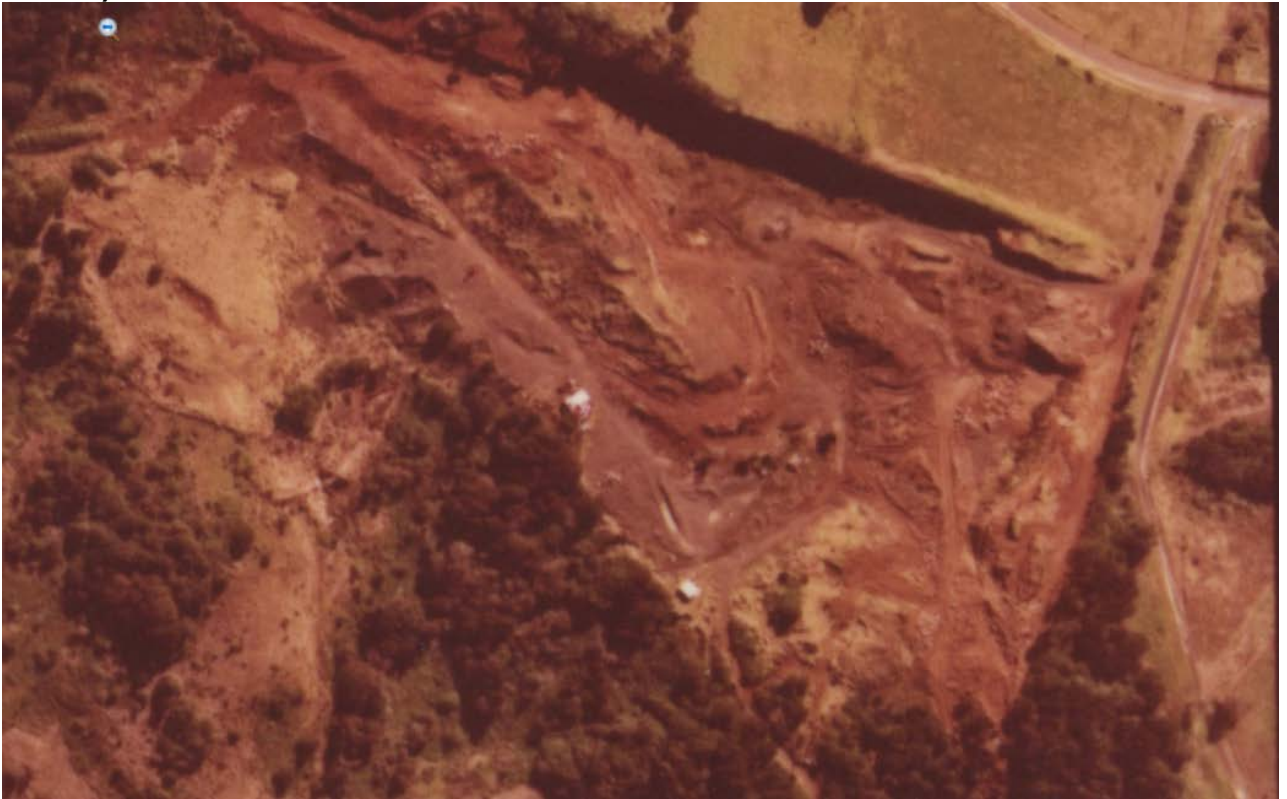
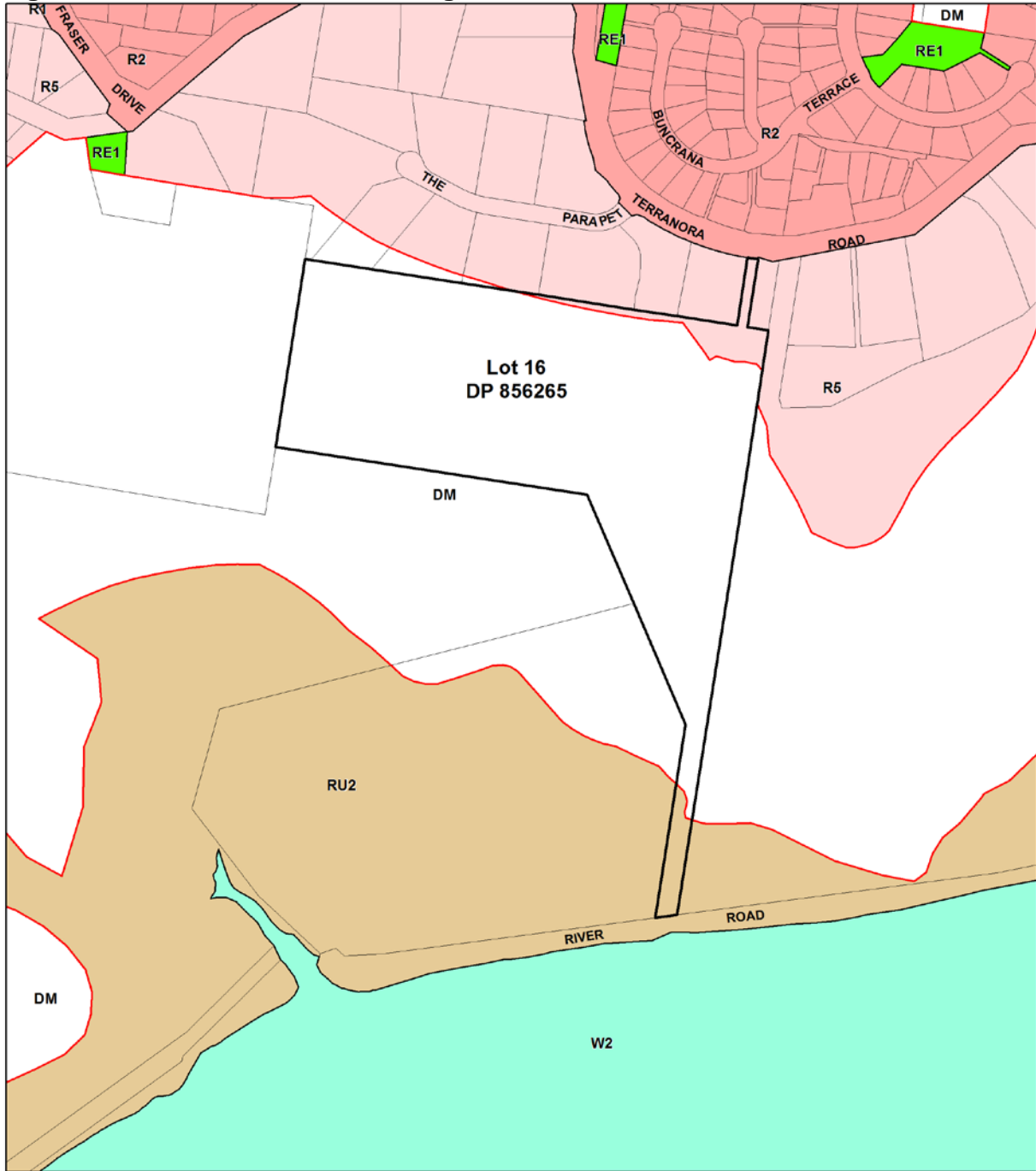


Figure 3: 2015 aerial image showing subject site, escarpment and locality



Figure 4: Tweed LEP 2014 – zoning



Tweed Local Environmental Plan 2014

Zone

<b>B1</b> Neighbourhood Centre	<b>E1</b> National Parks & Nature Reserves	<b>R5</b> Large Lot Residential	<b>SP1</b> Special Activities	<b>DM</b> Deferred Matter
<b>B2</b> Local Centre	<b>IN1</b> General Industrial	<b>RE1</b> Public Recreation	<b>SP2</b> Infrastructure	<b>MD</b> SEPP (Major Development) 2005
<b>B3</b> Commercial Core	<b>IN4</b> Working Waterfront	<b>RE2</b> Private Recreation	<b>SP3</b> Tourist	<b>TCC</b> Tweed City Centre LEP 2012
<b>B4</b> Mixed Use	<b>R1</b> General Residential	<b>RU1</b> Primary Production	<b>W1</b> Natural Waterways	
<b>B5</b> Business Development	<b>R2</b> Low Density Residential	<b>RU2</b> Rural Landscape	<b>W2</b> Recreational Waterways	
<b>B7</b> Business Park	<b>R3</b> Medium Density Residential	<b>RU5</b> Village	<b>W3</b> Working Waterways	

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 COPY ONLY - NOT CERTIFIED  
 Map Projection: Universal Transverse Mercator  
 Horizontal Datum: Geodetic Datum of Australia 1994  
 Grid: Map Grid of Australia, Zone 56

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Tweed Local Environmental Plan 2014

LAND ZONING MAP

Affected Properties:  
 Lot 16 DP 856265 - No.225 Terranora Road, Banora Point

Council File | PP10/0006  
 revised | 06/10/2016

Cadastral: 06 October, 2016  
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 Filepath: Z:\ESR\PRU\POLICIES & STRATEGIES\PLANNING PROPOSALS\PP10-0006-225 Terranora Road\MD\LNZ Proposed.mxd Author: J.Balchett - Strategic Planning & Urban Design Unit Date Plotted: 06 October, 2016

Figure 5: Zoning proposed by the proponent

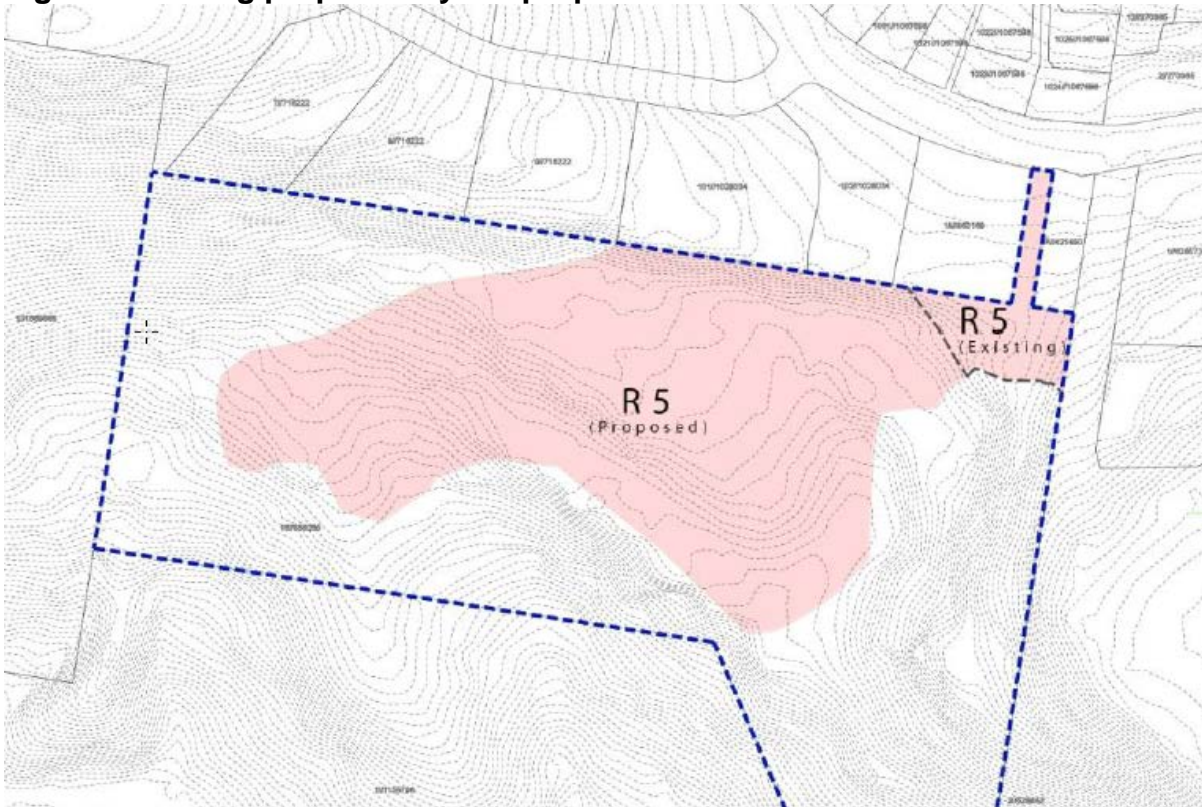
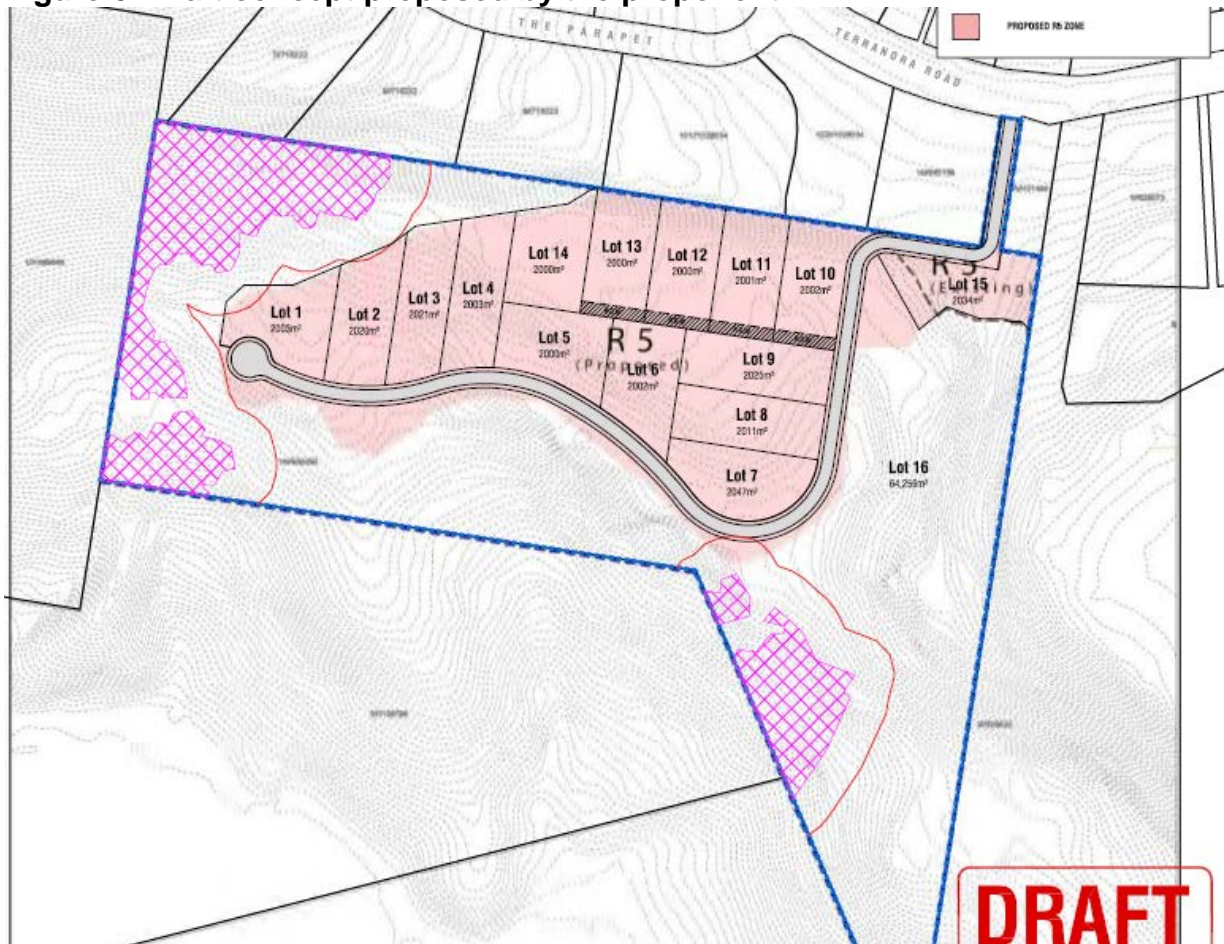


Figure 6: Draft concept proposed by the proponent



## The issues

The location of the site within the scenic escarpment and previous operation as a hard rock quarry presents some unique issues for consideration including:

1. Scenic amenity;
2. Access from Terranora Road;
3. Potential for contamination from quarry operations and fill material;
4. Water supply and waste water disposal;
5. Geotechnical stability and suitability;
6. Minimum lot size and lot yield;
7. Defining the vegetation boundary, and
8. Illegal dwellings and fill.

### 1. *Scenic amenity*

The site is shielded from long views from the north and Terranora Road due to the significant cut on the northern boundary (see Figure 9); however, the site will be highly visible to adjoining properties.

The site is also highly visible from the west when viewed from properties on Winchelsea Way and Nassau Avenue, and is clearly visible from elevated land and dwellings adjoining the eastern boundary, and from Tweed Valley Way or when approaching Tweed Heads on the Pacific Highway.

While roof tops of adjoining dwellings are visible from most vantage points, the escarpment is not dominated by any particular development. The potential impact of 16 dwellings is considered likely to have a significant impact on both the visual amenity of the site and the character of the locality and not consistent with the objectives of the current 7(d) zone and the proposed R5 zone as discussed below.

The significance of the scenic value of the escarpment and the visual impact of development on the site and locality has been addressed in the *Tweed Scenic Landscape Evaluation 1995*, *Tweed DCP section A5 – Subdivision Manual*, in previous correspondence to the landowner, *Tweed LEP 2000 and 2014*, and through a restriction on use of land to the north, as registered on the Land's Title.

### 2. *Tweed Scenic Landscape Evaluation 1995*

In 1995 Catherine Brouwer prepared the *Tweed Scenic Landscape Evaluation* which pointed out that the natural landscape of the Tweed is frequently open to wide views and is highly legible and for this reason the landscape plays a dominant and important role in the Shire identity and image.

Brouwer notes that residential expansion is significantly changing the landscape character particularly in the coastal hillslopes which are parts of the landscape that have high visibility and prominence and therefore changes could significantly affect the scenic amenity of the Shire.

Brouwer goes on to point out that these characteristics that give the Tweed landscapes their high scenic quality and prominence are amongst the major reasons it has a high sensitivity to change of its visual character and loss of scenic quality.

3. *Tweed LEP 2000 and 2014*

The majority of the site is currently zoned 7(d) Environmental Protection (Scenic/escarpment), under Tweed LEP 2000, and Deferred Matter under Tweed LEP 2014, until the guidelines provided in the Department of Planning and Environment's (DP&E) document '*Northern Councils E Zone Review – Final Recommendations Report*' are implemented through an amendment to Tweed LEP 2014.

The current zoning reflects the high visibility of the escarpment. While environmental and scenic protection zones under Tweed LEP 2000 will ultimately be translated into the Tweed LEP 2014, the intention of the 7(d) zone is clear with the primary objective of the zone being:

*“to protect and enhance those areas of particular scenic value to the area of Tweed, minimise soil erosion from escarpment areas, prevent development in geologically hazardous areas, and maintain the visual amenity of prominent ridgelines and areas.”*

With the exception of rural workers' dwellings, emergency service facilities, environmental facilities, and refreshment rooms, all residential development is prohibited.

While the proponent is proposing the use of the R5 Large Lot Residential zone, the intent of LEP 2000 is clearly to restrict residential development and applies to the zone affecting this site and the majority of land along the escarpment.

The DP&E guidelines for implementation of the E-zone review have advised that while issues relating to scenic protection may be identified in a development control plan or scenic protection strategy, councils on the Far North Coast will not be permitted to apply mapped planning controls for scenic protection in LEPs.

As such, the ability to carry the intent of the current 7(d) zone into Tweed LEP 2014 will be limited. Notwithstanding this, should further investigations support a change in zoning, and Council agrees that the use of the R5 Large Lot Residential zone can apply to at least part of the site, the objectives of the zone provide some guidance on the desirable outcomes for this zone, as listed in part below:

*“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.”*

While the intentions of both current and proposed zones raise scenic amenity as a consideration, the planning proposal has not adequately addressed the objectives of Council's LEPs.

A Visual Impact Assessment (VIA) has been provided by the proponent which demonstrates the extensive views across the Tweed Valley and further south to the coast. With such views obvious when looking south, the ability of the site to be visible when viewed from the south would be equally obvious.

The VIA discusses view fields but poorly represents the potential visual impact of 16 dwellings within the escarpment and provides no discussion regarding the significance of the site, previous advice to the landowner, the location within the escarpment and the



significance of the escarpment to the character not only of the location but to the Tweed and its identity more broadly.

A Scenic Landscape Strategy (SLS) is currently being prepared by the Strategic Planning and Urban Design Unit which will provide guidance in the assessment of proposals which may affect scenic amenity; however, while the strategy has not been completed, the visibility of the site is considered high and therefore the intensity and type of development will have a significant bearing on the impact of development.

For reference the draft SLS is being modelled on the methodology prepared for the Visual Management System for NSW Coast (Tweed Pilot) March 2004, which was a pilot visual landscape plan prepared for the Tweed coastline between NSW Planning and Tweed Council. It serves as an excellent resource document both for the current SLS under preparation and for any landscape visual analysis required in association with proposed development, including land rezoning.

Apart from other constraints which may affect the site, the potential for development of this site to significantly impact on the scenic landscape and identity of the Tweed more generally is considered significant and must be taken into consideration when determining the suitability of the site for the proposed development, the intensity and character of any development, and will require further detailed investigations should Council resolve to proceed with this proposal.

#### *4. Tweed DCP section A5 – Subdivision Manual*

While relating more specifically to subdivision, Tweed DCP 2008 provides guidance on restrictions to development that should be considered at the rezoning stage as well, particularly when a rezoning is sought to specifically facilitate land subdivision. The introduction to Section A5 – Subdivision Manual notes that the Tweed contains highly significant scenic and coastal environmental values and lists the retention of the Tweed's environmental and scenic values as a primary focus of all Council's decision making.

One of the key policies and actions listed in the DCP includes the avoidance of "urban sprawl", where Council will encourage local identity and preserve scenic and environmental qualities of urban areas.

The DCP also states that:

- *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 character of the locality.*

When considering constraints affecting a site, the DCP requires the integration of subdivision with the surrounding rural environment and need to complement existing scenic rural landscapes. Roads and dwelling platforms must be sensitive to the landscape of the area and must not occupy ridgelines and prominent locations that detract from the scenic quality and external views of the locality.

5. *Previous advice to the proponent*

In response to an earlier SEPP 1 appeal by the landowner to vary the minimum lot size for the property to create a two lot subdivision, the proponent was advised on 13 May 1999, that the location of the proposed dwelling “is likely to result in significant visual impacts ...” The matter of scenic impact has long been identified as a significant issue for any level of development of the site.

6. *Restriction on use of land to the north*

While not directly affecting to the subject site, creation of a restriction on use of land immediately to the north of the site provides guidance on the intended use of land within the scenic escarpment covering land subject of this request.

Deposited Plan 716222 registered on 26 August 1985 for subdivision of land immediately north of the site shows a restriction on use which applies to properties on The Parapet and Terranora Road as seen in Figure 7.

The restriction on use applies to land south of a line marked as “x-x-x” on the DP and burdens those properties such that no dwelling house or other permanent structure (other than boundary fencing) can be erected on any part of the land southerly of the line.

The location of the line appears to closely match the current boundary of the 7(d) Environmental Protection (scenic/landscape) zone as seen in Figure 8.

In the Engineer’s Subdivision Report to Council of 4 April 1984 it was noted that the escarpment lies along the southern boundary and is protected by an area of 7(e) Rural Environmental Protection – Escarpment zoning which is intended to protect the escarpment and skyline from the intrusion of dwelling houses, visible from the south (i.e. from the main Tweed Valley) and limits the number of dwellings permissible to one per forty hectares.

Scenic amenity of the immediate location, the escarpment and Tweed Valley was considered of such significance at the time that it was seen as appropriate to secure protection of the escarpment by registering restrictions on the Land’s Title.

It was clearly the intent of Council at that time to protect the scenic amenity of the Terranora escarpment which contains the property subject of this report. This intent has been carried forward in Tweed LEP 2000, with scenic amenity being identified as significant to the character of the Tweed.

*Tweed Link notice of development consent for rural residential development along Terranora Road*

In September 2002, an article was published in the Tweed Link advising of a 56 lot rural residential subdivision along Terranora Road Terranora. The Council officers’ planning report recommended that there be a greater separation between the development and the scenic escarpment, and Council resolved to ask the developer to provide a plan for ongoing management of vegetation, particularly camphor laurel in the scenic escarpment area of the subdivision. Again, in the early stages of the development of Terranora, scenic amenity was considered a high priority in determining development applications.

Figure 7: Extract from DP 716222 showing restriction on use applying to land immediately north of the site. No dwelling house or other permanent structure (other than boundary fencing) can be erected on any part of the land southerly of the line marked "x-x-x"

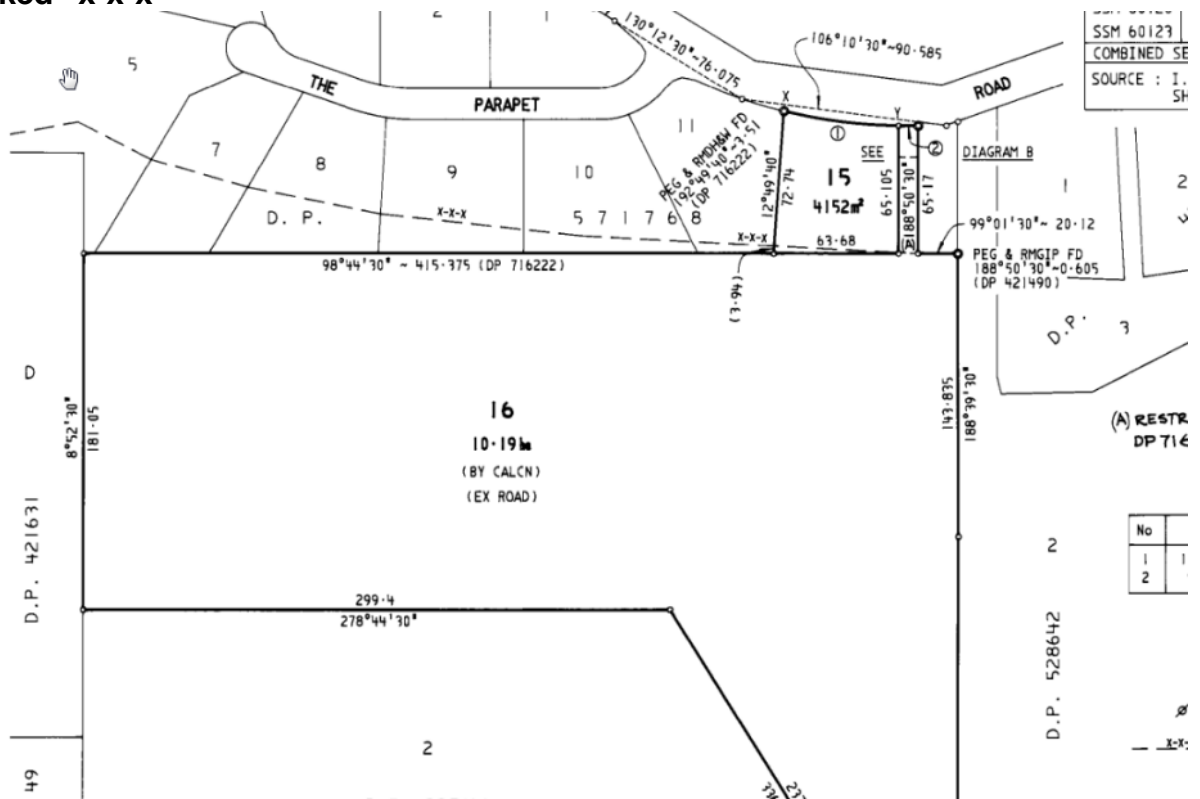
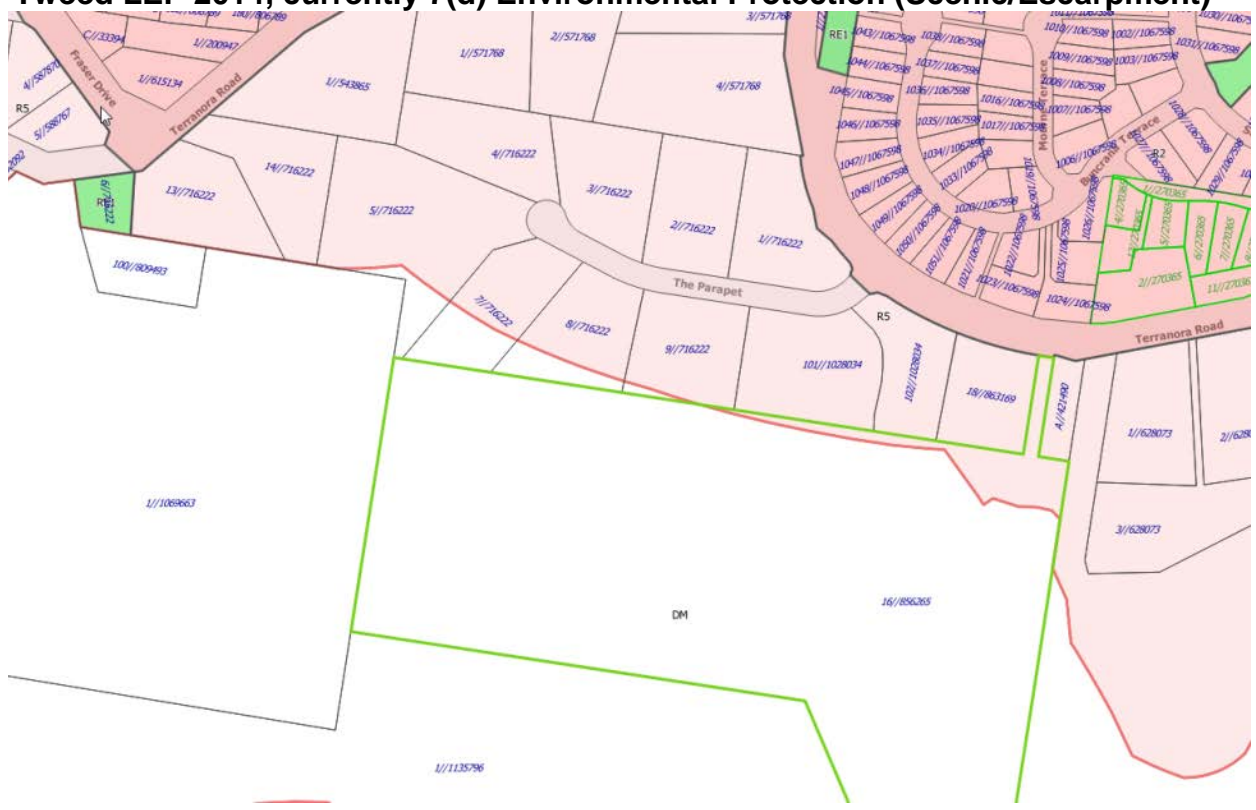


Figure 8: LEP 2014 showing zone boundary of Deferred Matter zoning under Tweed LEP 2014, currently 7(d) Environmental Protection (Scenic/Escarpment)



**Figure 9: View of the site from the east showing adjoining properties on The Parapet and Terranora Road**



## 7. Cumulative impact

Council is in receipt of two planning proposals seeking an extension of the R5 Large Lot Residential zone into land currently zoned 7(d) Environmental Protection (Scenic/Escarpment) in close proximity to each other as seen in Figure 10 below. The other request being Planning Proposal PP16/0002 Winchelsea Way, Terranora, which is also reported to the November 2016 Planning Committee Meeting.

In addition Council has received a verbal request from a landowner further west regarding subdivision of land also in the escarpment.

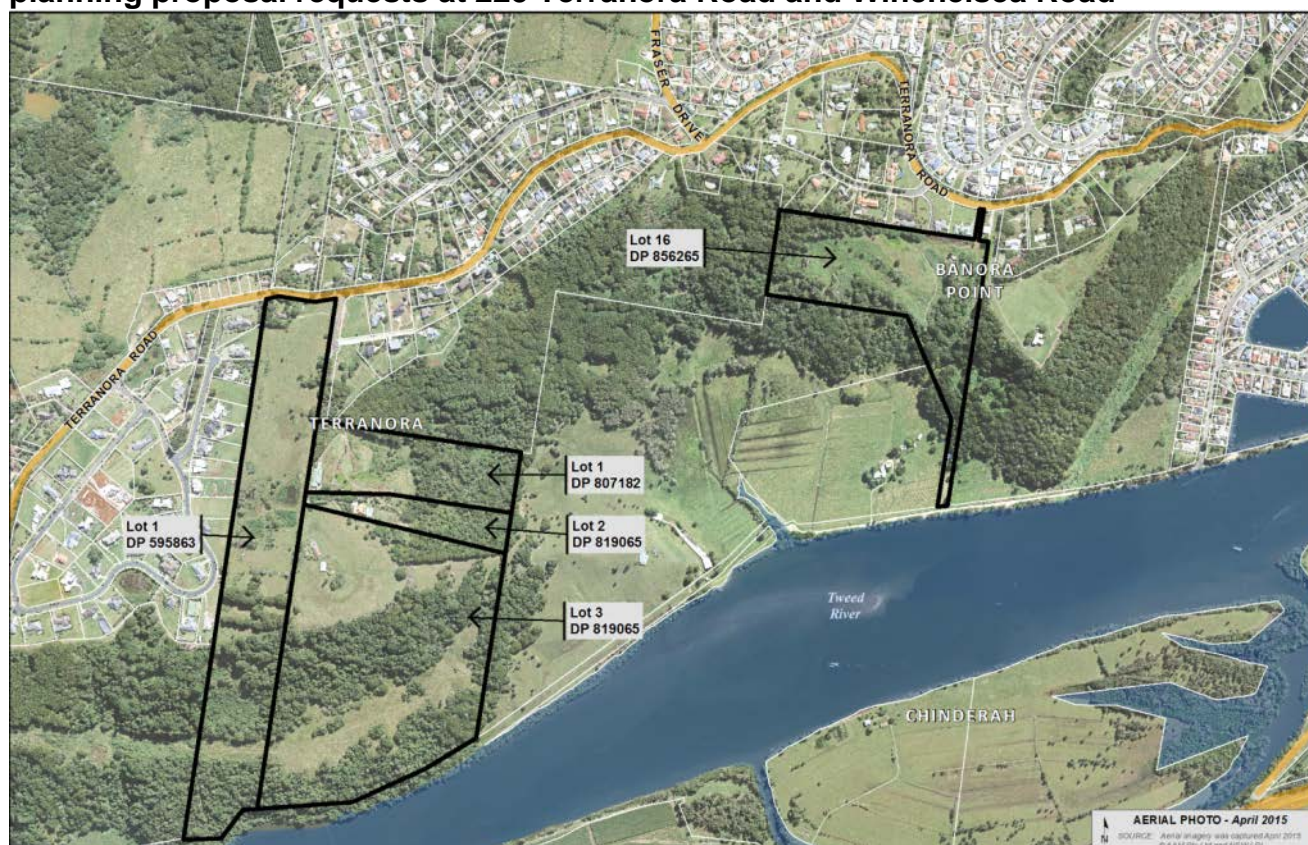
The potential for ongoing requests for development of land within the 7(d) zone can be expected to continue as pressure for scarce development opportunities grows.

While a Scenic Landscape Strategy is currently being prepared, Council has no overarching strategy to manage the potential cumulative impact of such proposals, but given that all three enquiries relate to the same landform (the escarpment to the south of Terranora Road), it is considered important that the scenic impact of such proposals be considered in the broader more strategic context rather than as isolated proposals.

The significance of the escarpment has long been recognised and enforced with tight restrictions on development imposed to protect scenic amenity, and while the two sites subject of current planning proposal requests appear as logical extension into cleared land, the view from the ground can present a much different perspective as Figure 9 shows.

Should Council resolve to proceed with these planning proposals on the basis that limited development may be possible, it is proposed that investigations must identify the potential cumulative impact on the scenic amenity of the escarpment, and provide details of how such impacts will be ameliorated, the style of development and specific controls addressing location of dwellings, building form and material, compliance with Council's LEPs, DCP and other requirements for protection of scenic amenity.

**Figure 10: Aerial image of the locality showing the location of land subject of planning proposal requests at 225 Terranora Road and Winchelsea Road**



#### 8. *Defining of the vegetation boundary*

One of the features of the site which will influence the extent of potential development is the boundary associated with the existing vegetation and its location within the scenic escarpment which defines the northern boundary of the Tweed Valley.

Notwithstanding the significance of scenic amenity of the escarpment, and the potential for the site to be revegetated to establish vegetation typical of adjoining land, and enhance the scenic and environmental qualities of the escarpment; this report has taken into consideration the current state of the site.

Council's Natural Resource Management Unit has undertaken a field investigation and identified a vegetation boundary as seen in Figure 11. The area of land contained outside of the defined limit of vegetation influence (including vegetation buffers) is approximately 3.57 hectares, but does not include asset protection zones.

The proposed extension of the R5 boundary would reduce the area of land zoned 7(d) and extend the potential area of land that might be suitable for uses other than environmental protection within the escarpment.

Any development of the site will need to address all constraints affecting the site and not be limited solely to consideration of the location of existing vegetation.

**Figure 11: Proposed vegetation boundary (derived by Council officers)**



*9. Width of the access handle and development potential*

Access to the site is provided through a 10 metre wide battle-axe handle from Terranora Road which provides access to both 225 Terranora Road and 227 Terranora Road.

Should subdivision of the site be possible, a common right of way access would be required to service any increased density of development. Tweed DCP 2008 Section A5 states that a maximum of five properties may use a common right of way access.

While the proponent proposes that a Community Title subdivision be created, and that the width of the access is sufficient to accommodate a “community title road”, DCP Section A5 also states that standards for street and lot layout for community title subdivision are the same as for conventional subdivisions.

As such, while this report proposes a maximum two lot subdivision capability, and notwithstanding other constraints affecting the site, a maximum lot yield for the site based solely on limitations imposed by the allotment’s access to Terranora Road is limited to not more than five allotments.

### *10. Contamination*

In its 2015 request, the proponent presented a soil contamination report dated 30 April 2002. Apart from the brevity of the report, changes have occurred in the requirements for assessing contamination since that time.

In preparing a planning proposal, State Environmental Planning Policy 55 Clause 6 requires Council to consider whether the land is contaminated, and if the site is contaminated, whether the land is suitable in its contaminated state, and if not, if the land requires remediation to make it suitable for any purpose which land in that zone is permitted to be used and that the planning authority is satisfied that the land will be remediated prior to the land being used for that purpose.

Given that the site was operated as a quarry, the potential extent of any contamination from former operation of the site, and fill has not been adequately addressed, but would be an essential requirement prior to consideration for public exhibition.

### *11. Water supply*

The site is not connected and will not be connected to Council's reticulated water supply system. The proponent proposes to utilise water harvesting from roof areas of each dwelling.

Council's standard requirement for a roof catchment water supply source for domestic purposes where Council's reticulated supply is unavailable is 15 kilolitres per bedroom.

Calculations provided by the proponent appear to be sufficient for a 3 bedroom dwelling; however, if dwelling sizes were to exceed 3 bedrooms the volume of rainwater for domestic use would need to be increased proportionately unless acceptable detailed water balancing indicates that the proposed 50kl for domestic use would be appropriate.

### *12. Waste water disposal*

The proponent has provided a Preliminary Effluent Disposal Assessment which has not addressed the site specific issues relevant to understanding the potential of the site to accommodate development as proposed.

In particular no mention is made of the previous operation of the site as a quarry and advice from the proponent that "ultimately, some importation of fill will be required to satisfy effluent disposal concerns".

No mention is made of the depth to bedrock and the potential for seepages from upslope currently affecting the site to influence the absorptive capacity of what is assumed to be minimal soil cover on the site, especially in winter when evaporation will be lowest on this southern aspect.

While it is proposed that a depth of 150mm of loam topsoil be provided on all irrigation areas, the soil depth to bedrock in effluent disposal areas would have to be significantly greater than 150mm in order to satisfy the performance requirements for land application system design when assessed in accordance with AS/NZS 1547/2012. The potential for seepages from upslope on to the effluent disposal areas and the impact of seepages on the

performance requirements for land application system design when assessed in accordance with AS/NZS 1547/2012' would have to be addressed.

Further investigation of effluent disposal capability of the site will be required should Council resolve to proceed with this planning proposal.

### *13. Geotechnical stability of the site*

Aerial imagery from 1962 (see Figure 12) shows the quarry site at what appears to be the early stages of operation. The image appears to show deeply incised drainage lines leaving the southern boundary of the site which do not appear in later imagery (see Figure 2) suggesting that a significant amount of fill has been deposited in these former drainage lines which will need to be addressed in the planning proposal. A recent site investigation revealed a actively eroding vertical wall approximately 10 metres in height at this location supporting concerns about the potential extent of fill in this location.

No history of the quarry operation has been provided by the proponent but given the potential for hard rock at the surface or for significant fill to have occurred a geotechnical assessment of the site to validate ability to be developed for residential purposes will be essential prior to finalising consideration of the planning proposal request.

Rehabilitation of actively eroding land (failed or unstable slopes and land surfaces) to prevent further erosion from the site and consequent sedimentation of downslope water courses, including the Tweed River should be addressed with any development of the site.

**Figure 12: Aerial photo 1962 showing early stages of quarry operation**





14. *Previous correspondence and history of the site*

The property has been the subject of a number of development applications and rezoning requests post operation of the quarry as noted below.

On *15 May 1999* the proponent lodged an objection pursuant to State Environmental Planning Policy 1 – Development Standards seeking a reduction in the minimum lot size to allow subdivision of the property into two lots, one split zone lot of one hectare and the second lot to cover the remnant of 9.19 hectares. The then Department of Urban Affairs and Planning (DUAP) refused to grant concurrence on the basis that the application was not supported by adequate planning reasons to justify a reduction in the development standard for the 7(d) zone.

The Department advised that the area is subject of a number of environmental constraints and that the most appropriate means of addressing the future of this area is through the Local Environmental Planning process.

On *23 October 2000* an amended SEPP 1 appeal was received on behalf of the landowner providing an amended concept creating one lot of approximately 4000 square metres entirely within the 1(c) Rural Living zone and a residual block of 9.79 hectares covering the remainder of the site zoned 7(d) Environmental Protection (scenic/escarpment) and 1(a) Rural. Both lots were to be connected to Council's reticulated sewerage system.

On *18 December 2000* correspondence was received from DUAP providing concurrence for the two lot subdivision but noted that concurrence did not extend to a dwelling on the larger remnant block predominantly zoned 7(d).

On *11 July 2002* the landowner lodged an application to amend Tweed LEP 2000 clause 53 Development of Specific Sites to permit a 12 lot community title subdivision (DA5440/872). No evidence of any action nor amendment relating to this application has been sighted.

On *31 July 2002* the proponent was advised of Development Consent No. 0152/2001DA for the erection of a dwelling on the proposed residual allotment to be connected to Council's reticulated sewerage system by a private pressure system. No evidence of any action relating to this approval has been sighted.

On *3 September 2002* the proponent was advised of Development Consent No. DA K99/0355 for a 2 lot rural subdivision providing that lot 1 had a minimum area of 4000 square metres, was entirely within the 1(c) Rural Living zone, and that both lots be connected to Council's reticulated sewerage system. Similarly no evidence of any action relating to this approval has been sighted.

On *28 October 2004* an application was received requesting a rezoning of the site in support of a 30 lot community title development connected to Council's reticulated water and sewerage systems. No action was taken in relation that request.

On *1 February 2010* the landowner wrote to Council advising of their desire to construct a single dwelling on the property; however there is no evidence indicating that this was progressed.

On 22 September 2010 a planning proposal was lodged with Council seeking an extension of the 1(c) Rural Living zone under Tweed LEP 2000, over land predominantly covered by the former quarry operation and presented a concept plan showing a 10 lot subdivision connected to Council's reticulated sewerage and water systems. This proposal was deferred until revised environmental protection areas were implemented through the then advertised Draft Tweed LEP 2010.

On 7 May 2015 a planning proposal was lodged over the same area of land for a rezoning of part of the property to allow large lot residential development creating nine (9) lots with a minimum lot size of 4000 square metres with the residual land possibly held under a community title arrangement. This is the current proposal subject of this report.

On 9 August 2016 additional material was provided proposing a 16 lot community title subdivision with allotments having a minimum of 2000 square metres (0.2ha).

#### 15. *Minimum lot size and lot yield*

The proponent's request of May 2015 was for the application of the appropriate development provisions which included a minimum lot size for allotments not connected to Council's reticulated sewerage system of one (1) hectare (10,000m<sup>2</sup>) in the R5 zone; however, concept plans presented with the request showed an indicative subdivision layout with 9 lots of about 4000 square metres and one residual lot containing the majority of vegetation. This was updated in May 2016 with additional information provided showing 15 lots of 2000 square metres and one residual lot containing vegetation.

Clause 4.2A(1) of Tweed LEP 2014 provides the opportunity for creation of allotments smaller than the minimum lot size in the R5 zone where the lot size would not jeopardise the semi-rural character and environmental values of the area, and a sewerage system is in place which ensures no harm to humans or the natural environment; however, clause 4.2A(2) limits the minimum lot size for lots which are connected to a water reticulation system and Council's sewage reticulations system, to not less than 4000 square metres.

#### 16. *Illegal dwellings*

The property contains two buildings which appear to have been at some time operated as residential dwellings. One dwelling lies on the northern portion of the property near the former quarry site, and appears to be a converted garage, with the second more substantial dwelling contained within the access handle approximately 100 metres off River Road to the south.

Council has no record of the legality of these dwellings and the landowner has previously been notified, in correspondence dated 10 May 2000, that works being undertaken on a shed in what appeared to be an intention to convert the shed to a habitable building must cease.

It is proposed that both structures are to be decommissioned for any residential purpose, unless approved by Council, and that should this planning proposal proceed, that it not be made until such time as this action is completed.

*17. Imported fill without planning permission*

In the past few months a substantial amount of fill has been deposited on the property, both as unconsolidated fill on the old quarry site (see Figure 13), and as an elevated access to the dwelling located off River Road, extending from River Road a distance of approximately 100 metres across the floodplain (see Figure 14).

The converted shed to the north lies within the 7(d) Environmental Protection (Scenic/Escarpment) zone, which required development consent under Tweed LEP 2000 for earthworks. No consent has been issued for earthworks on this site.

The house and access from River Road are contained within the RU2 Rural Landscape where fill is prohibited. The illegal filling of land and the potential impact of fill within the floodplain of the Tweed River will require further and separate consideration by Council officers.

**Figure 13: Fill on former quarry site off Terranora Road**



**Figure 14: Fill of access to dwelling off River Road**



It is proposed that all outstanding matters relating to the imported fill be satisfactorily resolved before proceeding further with the planning proposal.

**OPTIONS:**

- 1. Proceed with the planning proposal on the basis of not more than two allotments, consistent with previous development consent of 2002 conditional upon further investigations supporting the ability of development to not adversely impact scenic amenity or the environment and on completion of the compliance action, or**
- 2. Proceed with investigations to assess the ability of the site to be developed for limited rural residential development, including detailed geotechnical and scenic impact assessment, on the basis of a greater lot yield not exceeding five allotments, on completion of the compliance action, or**
- 3. Not support the planning request and proceed with the compliance action.**

Council officers recommend Option 1.

**CONCLUSION:**

Review of this request has raised a number of issues which are considered significant and remain unresolved.

The planning proposal has not adequately addressed the former use of the site as a hard rock quarry and associated issues of contamination, landfill, geotechnical stability, and suitability for onsite disposal of effluent.

The site lies within the escarpment along the southern side of Terranora Road which has been identified as being significant to the scenic amenity of the location, the Tweed Valley and Tweed's identity more generally.

The sensitivity of the landscape to development of any level is well documented and has been raised in previous correspondence to the landowner, but has not been adequately addressed in this proposal and will be a major factor determining the future use of the site.

When the quarry ceased operation, revegetation with indigenous species would have 'filled in' a gap in the vegetation on the escarpment; however the site has been kept in a mown state limiting the potential for re-establishment of tree species.

Lack of trees should not be considered a primary factor in determining the suitability of a site for residential development; however, while the site has been kept in a grassed state, its location within the scenic escarpment makes it a significant site.

While development consent for adjoining and nearby residential land has made specific reference to the need for protection of the escarpment and clear separation of housing development from the escarpment, to the point of having restrictions on use registered on title, Council has previously issued a development consent for a two lot subdivision of the site if the properties were connected to Council's reticulated water and sewer systems.

While the landowner has previously been advised that any level of development would have significant impacts on the scenic amenity, a two lot subdivision is considered an appropriate planning response providing that further investigations support this outcome, and the location, form and features of the house, including colour and visual impact are adequately addressed.

Council officers recommend that limiting the development of land to a two lot subdivision is an appropriate planning response because it reflects an actual constraint of the land when viewed against the visual landscape importance of the Terranora escarpment, which collectively with other unique landscape management units is the defining natural feature of the Tweed. The integrity of the Tweed's landscape is vital now and for the longer-term benefit it provides to the Tweed economy through tourism, and which has been cumulatively impacted over a long period through site by site development that individually have previously been perceived as imperceptible.

The Officers also recommend that no further action be taken with the planning proposal until such time that the compliance action for the illegal dwelling(s) and imported fill is concluded.

#### **COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable

**b. Budget/Long Term Financial Plan:**

Not Applicable

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

**Consult**-We will listen to you, consider your ideas and concerns and keep you informed.

**Inform** - We will keep you informed.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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**2 [PR-PC] Planning Proposal PP12/0001 - 420-434 Terranora Road, Terranora - Submission in Response to Public Exhibition by the Department of Planning and Environment**

**SUBMITTED BY: Strategic Planning and Urban Design**

**FILE REFERENCE: PP12/0001**

Validms

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## **Civic Leadership**

### **LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:**

- 1 Civic Leadership
  - 1.5 Manage and plan for a balance between population growth, urban development and environmental protection and the retention of economical viable agriculture land
  - 1.5.2 Land use plans and development controls will be applied and regulated rigorously and consistently and consider the requirements of development proponents, the natural environment and those in the community affected by the proposed development
- 

### **SUMMARY OF REPORT:**

This report seeks to advise Council that a submission prepared by Council officers has been sent to the Department of Planning and Environment (DP&E) in response to the public exhibition of Planning Proposal for 420-434 Terranora Road, Terranora.

The Planning Proposal was placed on public exhibition by DP&E, as the relevant planning authority, during the period 31 August 2016 to 14 September 2016, with the officers' submission required to be lodged prior to the next Council meeting, and as such this report is for the information of Council only.

### **RECOMMENDATION:**

**The attached submission sent to the Department of Planning and Environment on the public exhibition of the Planning Proposal PP12/0001 for 420-434 Terranora Road, Terranora is received and noted.**

## REPORT:

The planning proposal for 420-434 Terranora Road, Terranora has been the subject of detailed negotiations between Council, the proponent, and DP&E prior to planning proposal presented to the 5 November 2015 Planning Committee Meeting seeking a resolution to place the proposal on public exhibition.

At the November Planning Committee Meeting Council resolved to remove three allotments from the proposal based on the impact on existing views from Terranora Road, which led the proponent to apply to the DP&E for the appointment of an alternative relevant planning authority.

In correspondence dated 27 March 2016, the DP&E advised Council that the delegate for the Minister for Planning and Environment had determined to appoint the Secretary of Planning and Environment as the relevant planning authority (RPA) to finalise the planning proposal for 420-434 Terranora Road, Terranora.

The DP&E advised that in making this decision consideration was given to the suitability of Council's requirement to amend the planning proposal based on visual impact grounds which had not been identified as a key constraint under the Pre-Gateway and Gateway reviews.

The planning proposal was placed on public exhibition by DP&E during the period 31 August 2016 to 14 September 2016.

Due to the short period for lodgement of submissions an extension to 21 September 2016 was requested and granted to allow Council officers to prepare a detailed response.

A copy of the submission is provided in Attachment 1 to this report. The submission responds to a number of key aspects of the planning proposal including:

- Council's resolved position;
- Character of the locality, lot yield and configuration;
- Visual Amenity and Scenic Impact Assessment;
- Height of buildings;
- Access;
- Retaining wall;
- Sewerage;
- Flooding, and
- Role and need for a planning agreement or covenant.

The officers' submission addressed concerns that critical information had not been included in the exhibited document and as such it is not possible to make a full and proper assessment of the planning proposal.

Of particular significance was the failure of the document to adequately address the significant constraints affecting the site, the character of the locality, and the visual amenity and scenic impact of the proposed development.



The planning proposal also introduced a new approach to the coordination of infrastructure and service provision for the site not previously discussed in communication with the proponent or DP&E. The planning proposal now excludes the previously agreed use of a planning agreement (under the *Environmental Planning and Assessment Act 1979*) and proposes use of a covenant (under section 88E under the *Conveyancing Act 1919*). No detail was provided as to why the Department had changed its attitude to the use of the planning agreement, or how a covenant, which is established through legislation outside the planning process, would achieve the same guarantees that had previously been agreed with the proponent through a planning agreement.

The establishment of a legally binding agreement for the construction of services and infrastructure prior to the issue of consent for construction of dwellings is essential for Council to have certainty about the orderly development of the site, and considered important for potential purchasers who should be aware of restrictions that may affect development of individual allotments.

While issues such as coordination of private access, duplicate sewerage systems, reconstruction of the retaining wall, treatment of fill, and stormwater management can be managed through a legally binding agreement or existing Council procedures, the issue of scenic impact was not adequately addressed in the planning proposal, notwithstanding that the issue of scenic impact had been identified through Council's resolved position, previous adverse comments on the Visual Impact Assessment prepared by the proponent, and extensive correspondence regarding this matter.

The submission concludes by stating a long held position of Council that the site has the potential for some level of development, but that the extent and suitability of development was yet to be determined.

With the deadline for Council officers to lodge a submission falling before the next possible Council meeting, this report advises Council of the submission and recommends that it be received and noted.

#### **OPTIONS:**

- 1. Receive and note the report, or**
- 2. Advise of any further matters that Council wishes to advance to the DP&E or of any matters raised in the submission that the Council does not concur with.**

#### **CONCLUSION:**

The DP&E as the relevant planning authority has placed the planning proposal on public exhibition and is now considering submissions.

A submission, as attached, was prepared by Council officers and has been forwarded to the DP&E for consideration.

Council is not the relevant planning authority and has no further role in the preparation of the planning proposal.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable

**b. Budget/Long Term Financial Plan:**

Not Applicable

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

**Inform** - We will keep you informed.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Attachment 1.

Submission to the Department of Planning and Environment  
(ECM 4257558)

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**3 [PR-PC] Planning Proposal PP16/0002 - Lot 1 DP 595863, Lots 2 & 3 DP 819065 and Lot 1 DP 807182 Winchelsea Way, Terranora**

**SUBMITTED BY: Strategic Planning and Urban Design**

**FILE REFERENCE: PP16/0002**

Validms



## **Civic Leadership**

### **LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:**

- 1 Civic Leadership
- 1.5 Manage and plan for a balance between population growth, urban development and environmental protection and the retention of economical viable agriculture land
- 1.5.2 Land use plans and development controls will be applied and regulated rigorously and consistently and consider the requirements of development proponents, the natural environment and those in the community affected by the proposed development

### **SUMMARY OF REPORT:**

Council has received a request to prepare a planning proposal for part each of Lot 1 DP 595863, Lots 2 & 3 DP819065 and Lot 1 DP 807182, covering four properties on Winchelsea Way, Terranora. It seeks an expansion of the adjoining R5 Large Lot Residential zone to facilitate a 20 lot subdivision, proposing a zone boundary redefinition to align with the existing site vegetation.

The majority of the site is zoned 'Deferred Matter' under Tweed LEP 2014, 7(d) Environmental Protection (Scenic/Escarpment) under Tweed LEP 2000 and is highly visible within the escarpment to the south of Terranora Road making scenic impact a key consideration in the assessment of the proposed rezoning.

It is proposed that the location of existing vegetation is not the sole determining factor in defining the 7(d) zone boundary and that to protect the upper edge of the escarpment, assessment of the zone redefinition should be limited to land above a line roughly defined at this time as being above the 110 to 120 metre AHD contours.

Initial desk top review also revealed an Aboriginal Heritage Information Management System (AHIMS) registered site in the centre of the property, which will have implications for any rezoning, and along with other necessary studies will assist in determining the suitability of the site for large lot residential use.

This report also notes a further planning proposal has been received for a similar change of zoning within the former quarry site at 225 Terranora Road, approximately one kilometre to the east, which is also reported to the November 2016 Planning Committee meeting.

While both planning proposals seek to extend the R5 Large Lot Residential zone to cover grassland within the escarpment, a thorough assessment of the cumulative impact on the scenic amenity of the locality is seen as essential.

Although it is preferred that such matters are addressed with the proponent in advance of a report to Council, the Minister for Planning's administrative review procedures for '*Rezoning Review*', which essentially activate 90 days after the request was submitted, have not provided sufficient time to do so in this instance. It is in the best interest of all parties therefore if the officer's report documents the key matters and issues should the Proponent wish to seek a review.

The premise for the drafting of the recommendations reflect the report's conclusion that there is likely to be some level of development capacity within these lands, but not to the extent proposed in the request. They are drafted such that support for a rezoning by Council is conditional upon the proponent affirming the reduced investigation area of the proposal.

**RECOMMENDATION:**

**That Council, in respect of Planning Proposal PP16/0002 - Lot 1 DP 595863, Lots 2 & 3 DP 819065, and Lot 1 DP 807182 Winchelsea Way, Terranora, endorse that:**

- 1. The planning request for a zoning redefinition prepared by Darryl Anderson Consulting Pty Ltd is not supported in so far as it relates to the general extent of the proposed rezoning;**
- 2. A reduced area of investigation for a rezoning definition is supported for the land situated generally at the 110 to 120 metre AHD contour lines, and for the purpose of large lot residential;**
- 3. The Proponent is to confirm their acceptance of the reduced area for investigation within 21 days of the date of this resolution taking effect;**
- 4. On receipt of the Proponent's acceptance the Director Planning and Regulation is to prepare and submit a Planning Proposal for a Ministerial Gateway Determination for a zoning redefinition based on the reduced land area of investigation; and**
- 5. Should the Proponent fail to confirm their acceptance within the time required or notifies of their non-acceptance at any prior time the Director Planning and Regulation pursuant to s.10A of the *Environmental Planning and Assessment Regulation 2000* is to notify the proponent that their planning request is not supported.**

## **REPORT:**

On 25 May 2015 a request was received for Council to prepare a planning proposal for part of four allotments being Lot 1 DP 595863, Lots 2 & 3 DP 819065 and Lot 1 DP 807182, covering four properties on Winchelsea Way, Terranora.

An earlier request in 2004 to amend the then Tweed LEP 2000, covering the same properties provided documentation current at the time and has been resubmitted with this request. While the documents provide additional information, changes since that time will make much of this work redundant.

Council is in receipt of two planning proposals seeking a similar outcome on land within the escarpment in close proximity to each other. This report should be read in conjunction with the report for planning proposal PP10/0006 No. 225 Terranora Road also presented to the November 2016 Planning Committee Meeting.

### **The site and surrounding environment**

The area of land subject of this request covers part each of four separately owned properties (the site) and is identified as being predominantly cleared land containing three residential dwellings.

The site is accessed from Winchelsea Way as seen in Figure 1. Each property is predominantly zoned Deferred Matter under Tweed LEP 2014, 7(d) Environmental Protection (Scenic/Escarpment) under Tweed LEP 2000, and falls within the escarpment to the south of large lot residential land off Terranora Road, as seen in Figures 2, 3 and 4. The adjoining land off Nassau Avenue is zoned R5 Large Lot Residential.

Lot 1 DP 595863, which lies to the east of properties on Sunnycrest Drive and Nassau Avenue has an approved rural residential development (DC 242-10-2004) but does not contain a house. Lot 1 DP 807182 and Lot 2 DP 819065 each contain a dwelling. Lot 3 DP 819065 contains a house and is used for grazing purposes. The majority of the relatively low slope land lies within the latter allotment.

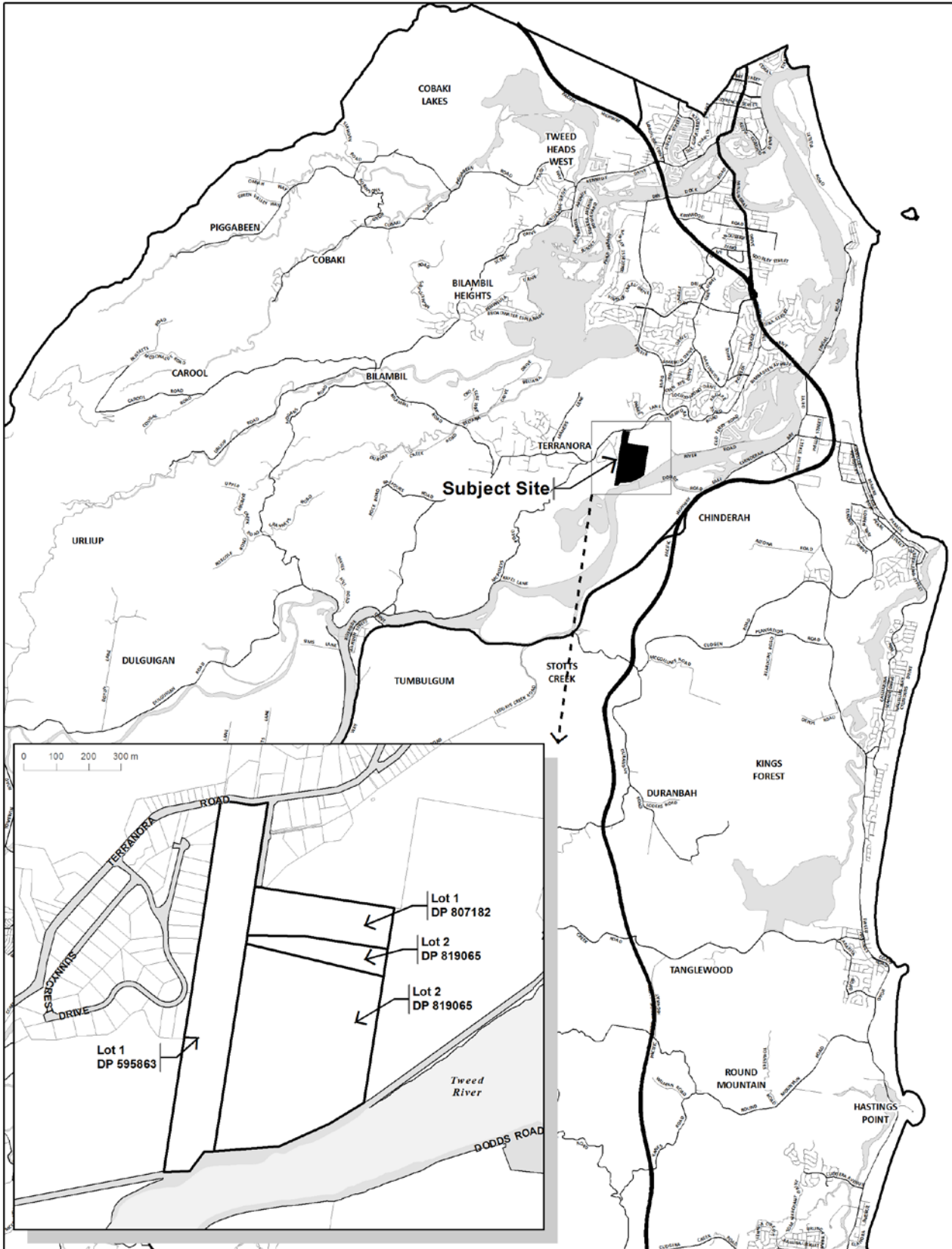
### **The request**

The request seeks to extend the R5 Large Lot Residential zone to enable the site to be subdivided for large lot residential purposes.

The request states that the proposed amendment to the LEP is intended to correct a mapping anomaly in terms of the zone boundary.

While no subdivision concept plans have been provided, the request notes that the amendment could result in an estimated 20 large lot residential lots, but does not mention a proposed lot size.

Figure 1: Locality Plan



1:100,000 @ A4 Portrait  
 0 0.5 1 1.5 2 Km  
 DO NOT SCALE  
 COPY ONLY - NOT CERTIFIED  
 Map Projection: Universal Transverse Mercator  
 Horizontal Datum: Geodetic Datum of Australia 1994  
 Grid: Map Grid of Australia, Zone 56

**Civic and Cultural Centre**  
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**Locality Plan**

**Affected Properties:**  
 Lot 1 DP 595863 - No.182 Winchelsea Way, Terranora;  
 Lot 2 DP 819065 - No.182 Winchelsea Way, Terranora;  
 Lot 3 DP 819065 - No.182 Winchelsea Way, Terranora;  
 Lot 1 DP 807182 - No.182 Winchelsea Way, Terranora;

Council File | PP16/0002  
 revised | 06/10/2016

**Cadastre: 06 October, 2016**  
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Figure 2: 2015 aerial photograph of the site, escarpment and locality



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 Horizontal Datum: Geoidetic Datum of Australia 1994  
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**Aerial Photo**

Source: Aerial Imagery was captured April 2015  
 © AAM Pty Ltd and NSW LPI.

**Affected Properties:**

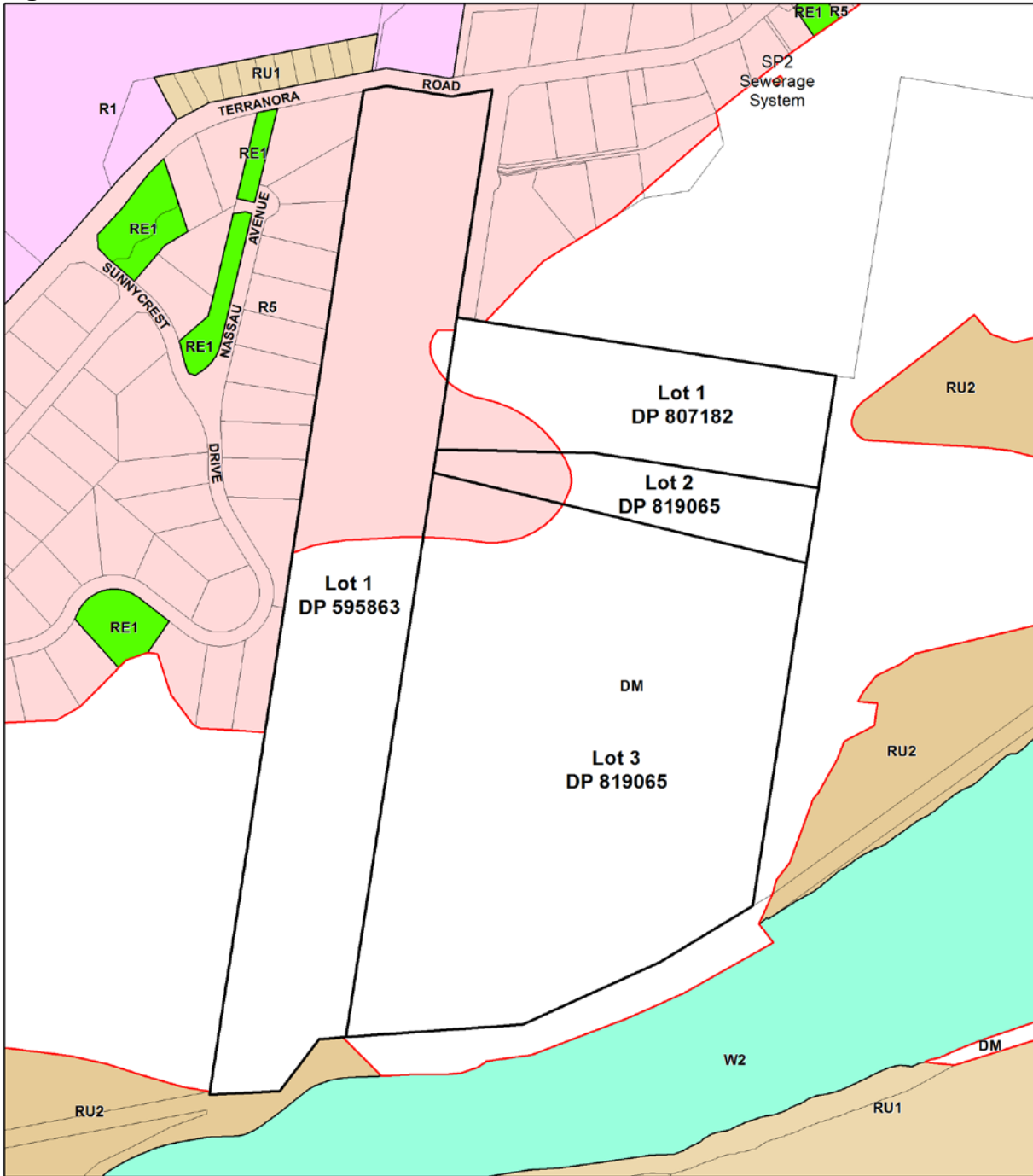
- Lot 1 DP 595863 - No.182 Winchelsea Way, Terranora;
- Lot 2 DP 819065 - No.182 Winchelsea Way, Terranora;
- Lot 3 DP 819065 - No.182 Winchelsea Way, Terranora;
- Lot 1 DP 807182 - No.182 Winchelsea Way, Terranora;

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 revised |06/10/2016

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Figure 3: Tweed LEP 2014



**Tweed Local Environmental Plan 2014**

Zone					
<b>B1</b> Neighbourhood Centre	<b>E1</b> National Parks & Nature Reserves	<b>R5</b> Large Lot Residential	<b>SP1</b> Special Activities	<b>DM</b> Deferred Matter	
<b>B2</b> Local Centre	<b>IN1</b> General Industrial	<b>RE1</b> Public Recreation	<b>SP2</b> Infrastructure	<b>MD</b> SEPP (Major Development) 2005	
<b>B3</b> Commercial Core	<b>IN4</b> Working Waterfront	<b>RE2</b> Private Recreation	<b>SP3</b> Tourist	<b>TCC</b> Tweed City Centre LEP 2012	
<b>B4</b> Mixed Use	<b>R1</b> General Residential	<b>RU1</b> Primary Production	<b>W1</b> Natural Waterways		
<b>B5</b> Business Development	<b>R2</b> Low Density Residential	<b>RU2</b> Rural Landscape	<b>W2</b> Recreational Waterways		
<b>B7</b> Business Park	<b>R3</b> Medium Density Residential	<b>RU5</b> Village	<b>W3</b> Working Waterways		

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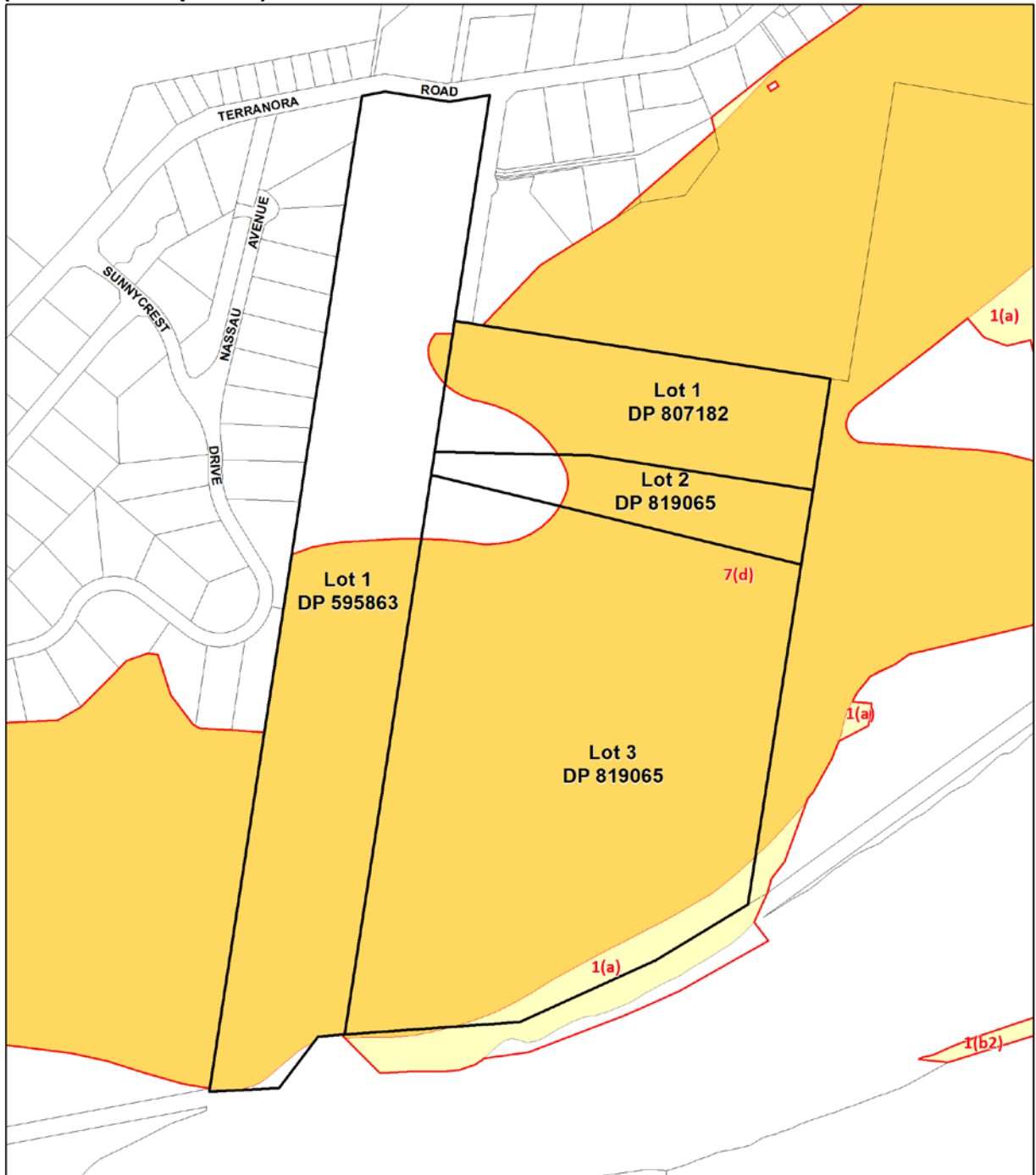
**Tweed Local Environmental Plan 2014**  
**LAND ZONING**  
**Affected Properties:**  
 Lot 1 DP 595863 - No.182 Winchelsea Way, Terranora;  
 Lot 2 DP 819065 - No.182 Winchelsea Way, Terranora;  
 Lot 3 DP 819065 - No.182 Winchelsea Way, Terranora;  
 Lot 1 DP 807182 - No.182 Winchelsea Way, Terranora;

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Figure 4: Tweed LEP 2000 showing extent of 7(d) Environmental Protection (Scenic/Escarpment) zone.



ZONING	RESIDENTIAL	BUSINESS	INDUSTRIAL	ENVIRONMENTAL PROTECTION	NATIONAL PARKS & NATURE RESERVES
<b>RURAL</b> 1(a) Rural 1(c) Rural living 1(b1) Agricultural Protection 1(b2) Agricultural Protection	2(a) Low Density Residential 2(b) Medium Density Residential 2(f) Tourism 2(c) Urban Expansion 2(d) Village 2(e) Residential Tourist	3(a) Sub-Regional Business 3(b) General Business 3(c) Commerce & Trade 3(d) Waterfront Enterprise 3(e) Special Tourist (Jack Evans Boat Harbour)	4(a) Industrial <b>SPECIAL USES</b> 5(a) Special Uses <b>OPEN SPACE</b> 6(a) Open Space 6(b) Recreation	7(a) Environmental Protection (Wetlands and Littoral Rainforest) 7(d) Environmental Protection (Scenic / Escarpment) 7(f) Environmental Protection (Coastal Lands) 7(g) Environmental Protection (Habitat)	8(a) National Parks and Nature Reserves <b>DEFER</b> defer

ADDITIONAL CONTROLS	Clause 41 (Heritage Conservation Area)	Clause 52 (Minimum Lot Sizes)	Clause 53 (Schedule 3 Item)
Clause 37 (Transmission Line Corridor) Clause 38 (Future Roads)	Clause 41 (Heritage Conservation Area) Clause 52 (Existing and Future Dam Areas)	Clause 52 (Minimum Lot Sizes) Clause 52 (Stormwater and Fill)	Clause 53 (Schedule 3 Item) Clause 52 (Pottsville)

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Horizontal Datum: Geodetic Datum of Australia 1994  
Grid: Map Grid of Australia, Zone 56

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**Tweed Local Environmental Plan 2000**

**LAND ZONING**  
**Affected Properties:**  
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 Lot 3 DP 819065 - No.182 Winchelsea Way, Terranora;  
 Lot 1 DP 807182 - No.182 Winchelsea Way, Terranora;

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revised |06/10/2016  
  
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## The issues

The site has undergone a preliminary assessment and determined that the following issues require further consideration:

1. Scenic amenity;
2. Potential for contamination from farming operations;
3. Water supply and waste water disposal;
4. Defining the amended R5 zone boundary;
5. Lot yield and minimum lot size and, and
6. Defining the vegetation boundary.

## Scenic impact

The site lies approximately one kilometre west of another planning proposal also reported to the November 2016 Planning Committee Meeting. This report should be read in conjunction with the report for 225 Terranora Road, also seeking an extension of the R5 Large Lot Residential zone into the 7(d) Environmental Protection (Scenic/escarpment zone).

In addition to these two planning proposals, an enquiry has been received regarding subdivision of land within the escarpment further west also in the escarpment.

Because both this report for Winchelsea Way and the second report for 225 Terranora Road address issues common to both requests, the following section on scenic amenity is relevant to both reports.

One of the initial matters to be considered when reviewing a request to prepare a planning proposal is the strategic merit of the proposal. In the absence of a strategy or Council policy to guide assessment of such proposals, previous decisions of Council and investigations can provide clarification of Council's established approach to development of land within the escarpment.

Council's previous approach to residential and rural residential development bordering the escarpment and scenic impact has been to prohibit or significantly restrict residential development in or adjoining the escarpment.

The site is highly visible from Terranora Road, and when viewed from properties on The Parapet, and land immediately east of 225 Terranora Road as seen in Figure 5. The site is also readily identifiable from further south in the Tweed Valley and from Tweed Valley Way and when approaching Tweed Heads on the Pacific Highway.

The site is elevated and while it is proposed to extend the R5 zone boundary to the boundary of existing vegetation, which may at first seem logical when viewing the site from above, as seen in aerial photography, the view that is of most significance is that seen from a similar height as in Figure 5.

As with the quarry site on 225 Terranora Road, should development extend into the escarpment as far as proposed, the horizontal alignment of the escarpment would be significantly interrupted by residential development and disrupt the uniformity of the escarpment when viewed from adjoining land or from the south.

While residential development is visible above the site and the three houses on the site are obvious, they do not dominate the view field to the point of detracting from the value of the escarpment.

The potential impact of 20 dwellings is considered likely to have a significant impact on both the visual amenity of the site and the character of the locality and not consistent with the objectives of the current 7(d) zone and the proposed R5 zone as discussed below.

The significance of the scenic value of the escarpment and the visual impact of development on the site and locality has been addressed in the *Tweed Scenic Landscape Evaluation 1995*, *Tweed DCP Section A5 – Subdivision Manual*, *Tweed LEP 2000 and 2014*, and through a restriction on use of land registered on title of properties off Terranora Road and The Parapet.

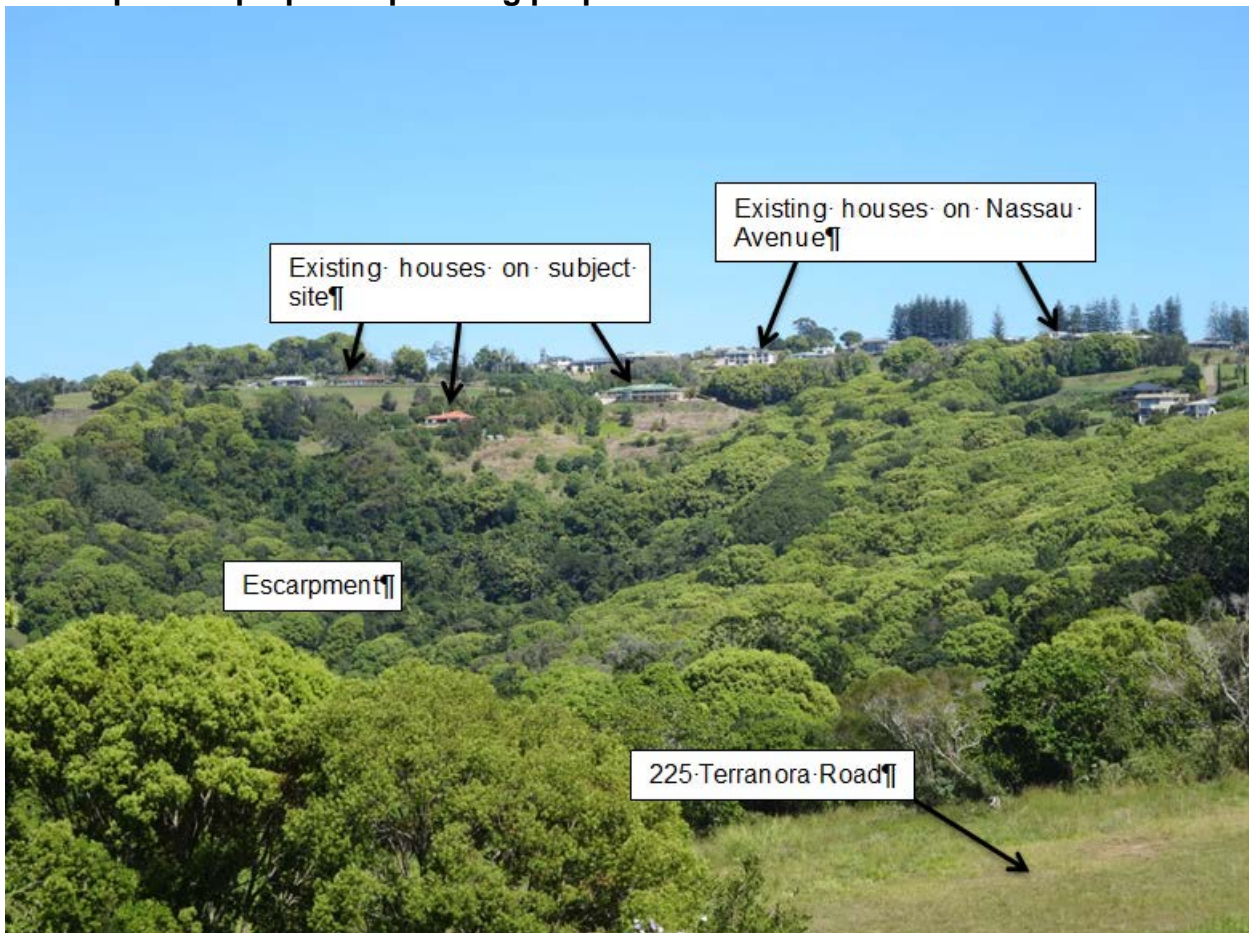
#### *Tweed Scenic Landscape Evaluation 1995*

In 1995 Catherine Brouwer prepared the Tweed Scenic Landscape Evaluation which pointed out that the natural landscape of the Tweed is frequently open to wide views and is highly legible and for this reason the landscape plays a dominant and important role in the Shire identity and image.

Brouwer notes that residential expansion is significantly changing the landscape character particularly in the coastal hillslopes which are parts of the landscape that have high visibility and prominence and therefore changes could significantly affect the scenic amenity of the Shire.

Brouwer goes on to point out that these characteristics that give the Tweed landscapes their high scenic quality and prominence are amongst the major reasons it has a high sensitivity to change of its visual character and loss of scenic quality.

**Figure 5: View of site from land immediately east of 225 Terranora Road, also subject of a request to prepare a planning proposal**



*Tweed LEP 2000 and 2014*

The majority of the site is currently zoned 7(d) Environmental Protection (Scenic/escarpment), under Tweed LEP 2000, a Deferred Matter until the guidelines provided in the Department of Planning and Environment's (DPE) document '*Northern Councils E Zone Review – Final Recommendations Report*' are implemented through an amendment to Tweed LEP 2014.

The current zoning reflects the high visibility of the site and the escarpment more broadly. While environmental and scenic protection zones under Tweed LEP 2000 will ultimately be translated into the Tweed LEP 2014, the intention of the 7(d) zone is clear with the primary objective of the zone being:

*“to protect and enhance those areas of particular scenic value to the area of Tweed, minimise soil erosion from escarpment areas, prevent development in geologically hazardous areas, and maintain the visual amenity of prominent ridgelines and areas.”*

With the exception of rural workers' dwellings, emergency service facilities, environmental facilities, and refreshment rooms, all residential development is prohibited.

While the proponent is proposing the use of the R5 Large Lot Residential zone, the intent of LEP 2000 is clearly to restrict residential development and applies to the zone affecting this site and the majority of land along the escarpment.

The DPE guidelines for implementation of the E-zone review have advised that while issues relating to scenic protection may be identified in a development control plan or scenic protection strategy, councils on the Far North Coast will not be permitted to apply mapped planning controls for scenic protection in LEPs.

As such, the ability to carry the intent of the current 7(d) zone into Tweed LEP 2014 will be limited. Notwithstanding this, should further investigations support a change in zoning, and Council agrees that the use of the R5 Large Lot Residential zone can suitably apply to at least part of the site, the objectives of the zone provide some guidance on the desirable outcomes for this zone, as listed in part below:

*“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.”*

While the intentions of both current and proposed zones raise scenic amenity as a consideration, the planning proposal has not adequately addressed the objectives of Council's LEPs.

A Visual Impact Assessment (VIA) has been provided by the proponent dated August 2003, for an earlier 33 lot development on part only of the site (Lot 1 DP 595863 and Lot 3 DP 819065), but does not cover the majority of the area subject of this request. This assessment is not sufficiently current to submit to the DPE in support of the rezoning of the land (they require no more than 2 years old ideally)

A Scenic Landscape Strategy is currently being prepared by the Strategic Planning and Urban Design Unit which will provide guidance in the assessment of proposals which may affect scenic amenity; however, while the strategy has not been completed, the potential visual impact of 20 dwellings within the escarpment has not been addressed nor has the significance of the site within the escarpment and the significance of the escarpment to the character not only of the location but to the Tweed and its identity more broadly.

Apart from other constraints which may affect the site, the potential for development of this site to significantly impact on the scenic landscape and identity of the Tweed more generally is considered significant and must be further considered when determining the suitability of the site for the proposed development, the intensity and character of any potential development, and will require further detailed investigations should Council resolve to proceed with this proposal.

#### *Tweed DCP section A5 – Subdivision Manual*

While more relevant at the subdivision stage, the value of the landscape is further reinforced in provisions established in Council's DPE and establishes guidelines that impact the location of residential development.

The introduction to Tweed DCP section A5 – Subdivision Manual notes that the Tweed contains highly significant scenic and coastal environmental values and lists the retention of the Tweed's environmental and scenic values as a primary focus of all Council's decision making.

One of the key policies and actions listed in the DCP includes the avoidance of “urban sprawl”, where Council will encourage local identity and preserve scenic and environmental qualities of urban areas.

The DCP also states that:

- *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 character of the locality.*

When considering constraints affecting a site, the DCP requires the integration of subdivision with the surrounding rural environment and complement existing scenic rural landscapes. Roads and dwelling platforms must be sensitive to the landscape of the area and must not occupy ridgelines and prominent locations that detract from the scenic quality and external views of the locality.

*Tweed Link notice of development consent for rural residential development along Terranora Road*

In September 2002, an article was published in the Tweed Link advising of a 56 lot rural residential subdivision along Terranora Road Terranora. The Council planners’ report recommended that there be a greater separation between the development and the scenic escarpment, and Council resolved to ask the developer to provide a plan for ongoing management of vegetation, particularly camphor laurel in the scenic escarpment area of the subdivision. The need to protect the escarpment from the impact of development within close proximity has been well documented.

*Restriction on use of land to the north*

While not directly applying to the subject site, creation of a restriction on use of land on The Parapet and Terranora Road provides guidance on the intended use of land within the scenic escarpment covering land subject of this planning proposal request.

DP 716222 registered on 26 August 1985 for subdivision of land on The Parapet and Terranora Road shows a restriction on use as seen in Figure 6.

The restriction on use applies to land south of a line marked as “x-x-x” on the DP and burdens those properties such that no dwelling house or other permanent structure (other than boundary fencing) can be erected on any part of the land southerly of the line.

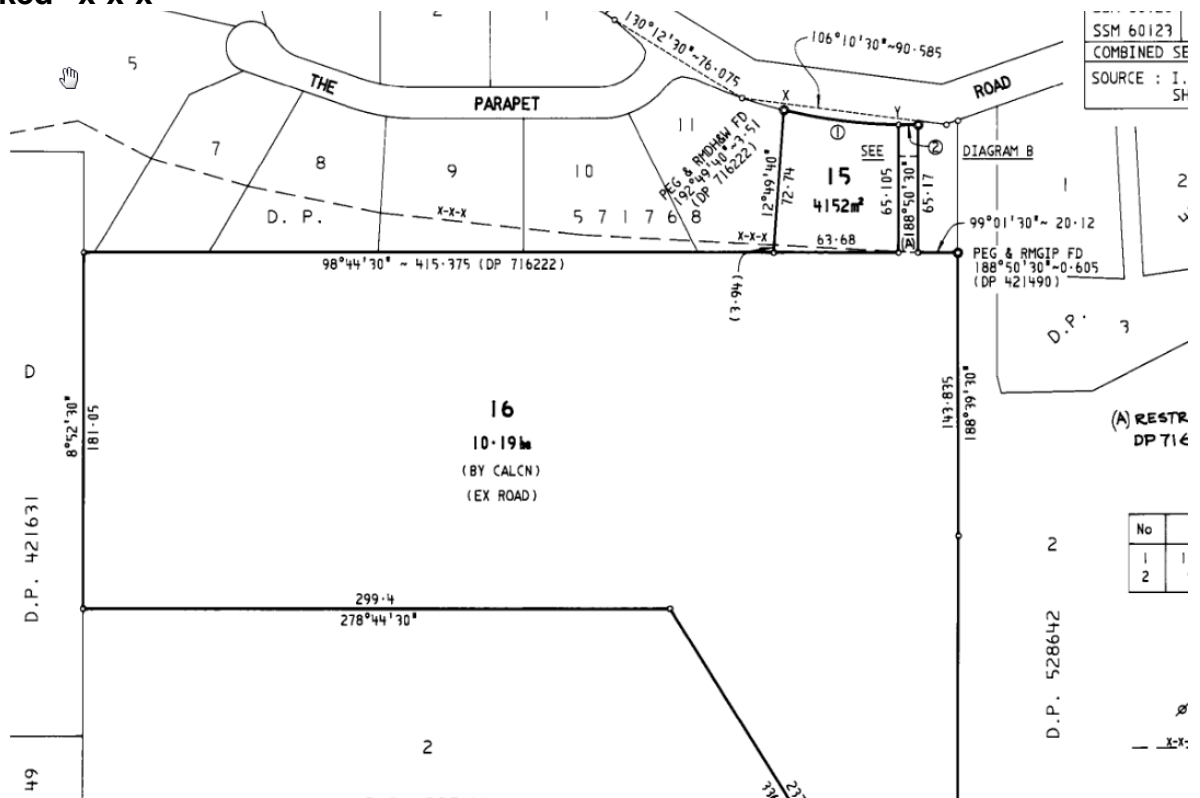
The location of the line appears to closely match the current boundary of the 7(d) Environmental Protection (scenic/landscape) zone as seen in Figure 7.

In the Engineer’s Subdivision Report to Council of 4 April 1984 it was noted that the escarpment lies along the southern boundary and is protected by an area of 7(e) Rural Environmental Protection – Escarpment zoning which is intended to protect the escarpment and skyline from the intrusion of dwelling houses, visible from the south (i.e. from the main Tweed Valley) and limits the number of dwellings permissible to one per forty hectares.

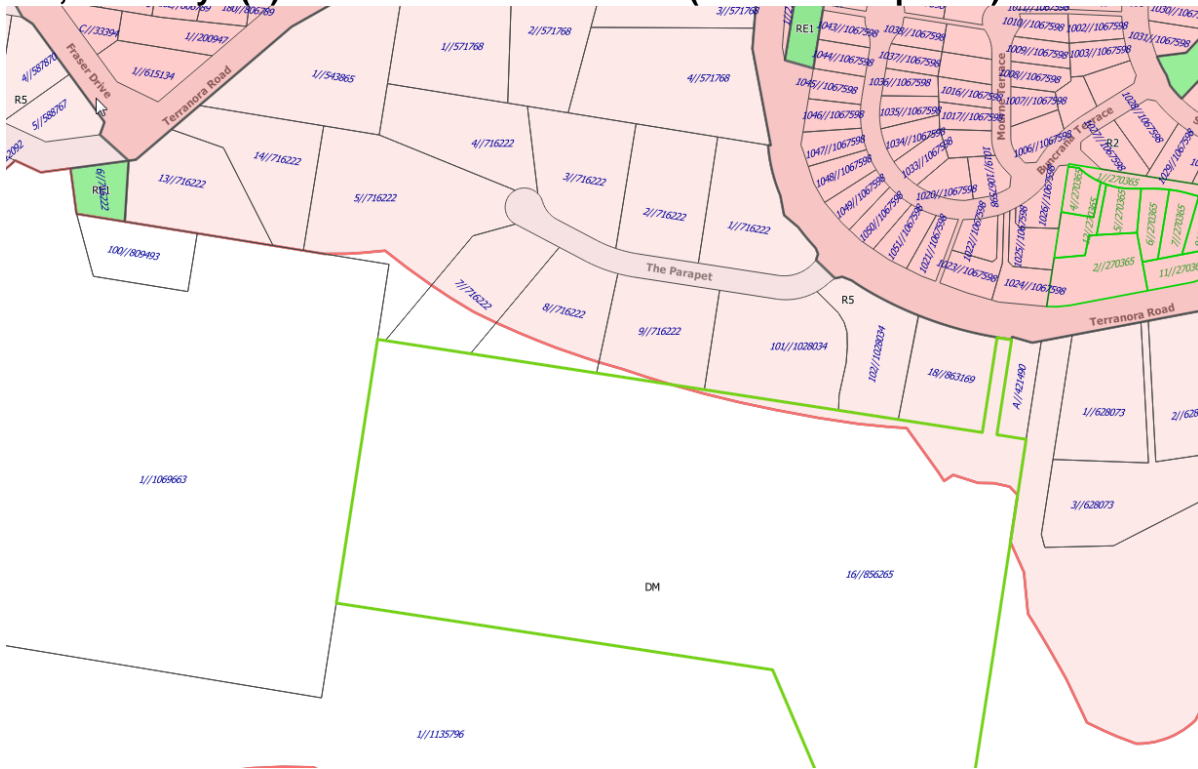
Scenic amenity of the immediate location, the escarpment and Tweed Valley was considered of such significance at the time that it was seen as appropriate to secure protection of the escarpment by registering restrictions on title.

It was clearly the intent of Council at that time to protect the scenic amenity of the Terranora escarpment. This intent has been carried forward in Tweed LEP 2000, with scenic amenity being identified as significant to the character of the Tweed.

**Figure 6: Extract from DP 716222 showing restriction on use applying to land immediately north of the site. No dwelling house or other permanent structure (other than boundary fencing) can be erected on any part of the land southerly of the line marked "x-x-x"**



**Figure 7: LEP 2014 showing zone boundary of Deferred Matters under Tweed LEP 2014, currently 7(d) Environmental Protection (Scenic/escarpment) under LEP 2000**





### *Cumulative impact*

Council is in receipt of two planning proposals seeking an extension of the R5 Large Lot Residential zone into land currently zoned 7(d) Environmental Protection (Scenic/Escarpment) in close proximity to each other as seen in Figure 8. The other request being PP10/0006 225 Terranora Road, Bilambil Heights also presented to the November 2016 Planning Committee Meeting.

In addition Council has received an enquiry for subdivision of land further west, also in the escarpment.

The potential for ongoing requests for development of land within the 7(d) zone can be expected to continue as pressure for scarce development opportunities grows.

At this time, Council has no over-arching strategy to manage the potential cumulative impact of such proposals but given that all three enquiries relate to the same landform (the escarpment to the south of Terranora Road), consideration should be given to the broader more strategic context rather than as isolated proposals.

The significance of the escarpment has long been recognised and upheld by Council with restrictions on development imposed to protect scenic amenity, and while the two sites subject of current planning proposal requests appear as logical extension into cleared land, the view from the ground can present a much different perspective as Figure 5 shows.

Should Council resolve to proceed with either or both of these planning proposals on the basis that limited development may be possible, it is proposed that investigations must identify the cumulative impact on the scenic amenity of the escarpment, and provide details regarding how this impact will be reduced or eliminated, the style of development and specific controls addressing location of dwellings, building form and material, compliance with Council's LEPs, DCP and other requirements for protection of scenic amenity.

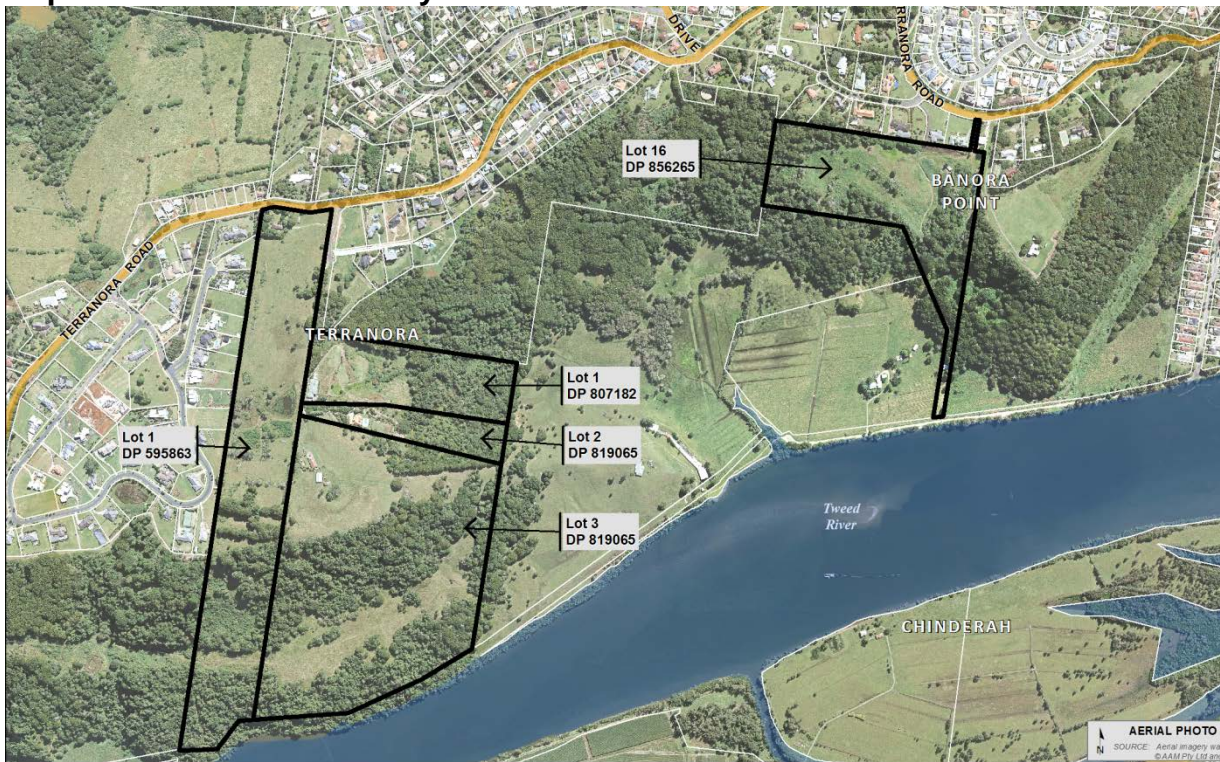
### **Minimum lot size and lot yield**

The proponent's request does not stipulate a minimum lot size; however, assuming the site can be connected to Council's reticulated wastewater system as proposed, a minimum lot size of 4000 square metres would apply so long as the lot size created did not jeopardise the semi-rural character and environmental values of the area, and no harm to humans or the natural environment occurred. Should connection not be possible, a minimum lot size of one (1) hectare would be required under Tweed LEP 2014.

Until such time as more detailed investigations are completed and matters raised in this report are considered it will not be possible to determine the potential lot yield or lot size for any change to the R5 zone boundary.

Should additional investigations raise further complications to development of the site it is proposed that development be reduced consistent with the findings of those investigations.

**Figure 8: Aerial image of the locality showing land subject of planning proposal requests at Winchelsea Way and 225 Terranora Road**



*Proposed limit to development*

The proponent has argued that the rezoning will simply rectify a zone boundary anomaly; however, the creation of the 7(d) zone was not predicated solely upon the location of existing vegetation; scenic amenity was a principle objective of the zone which has been supported through historical resolutions of Council.

While the current 7(d) zone boundary provides a limit to development, and protection of the escarpment, given the features of the site, and potential for some level of residential development, it is proposed that the limit of development, and any change to the zone boundary, include consideration of a height above sea level as a means of defining how far into the escarpment development can occur without adversely affecting the scenic qualities of the landscape.

As seen in Figures 5 and 9, the upper tree line of the escarpment is not uniform, with grassed land extending down into the escarpment, but does not detract from the scenic amenity of the view. Should housing extend down into these grassed areas, the horizontal delineation of the escarpment would be significantly impacted.

As such, it is proposed that an elevation above sea level be applied that reflects the boundary of existing housing development adjoining the site and maintains the integrity of the upper boundary of the scenic escarpment. An AHD of 110 or 120 metres is proposed as seen in Figures 9 and 10. The final location of the proposed zone boundary is to be determined once a more detailed investigation of the site including scenic amenity is concluded.

While the exact location of this line is yet to be determined, the presence of trees should not be the sole determining factor in its location.

Figure 9: View of the site from land east of 225 Terranora Road showing the approximate location of limit to development

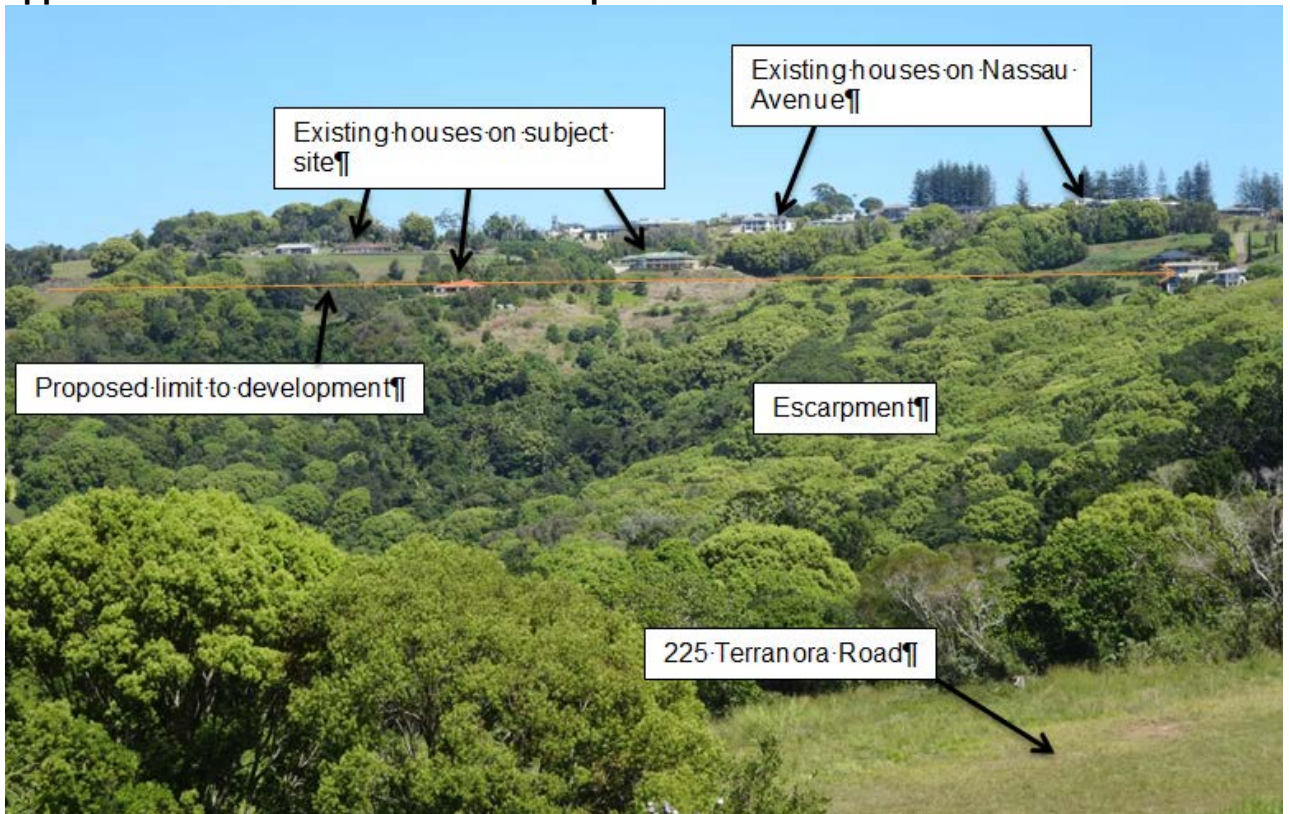
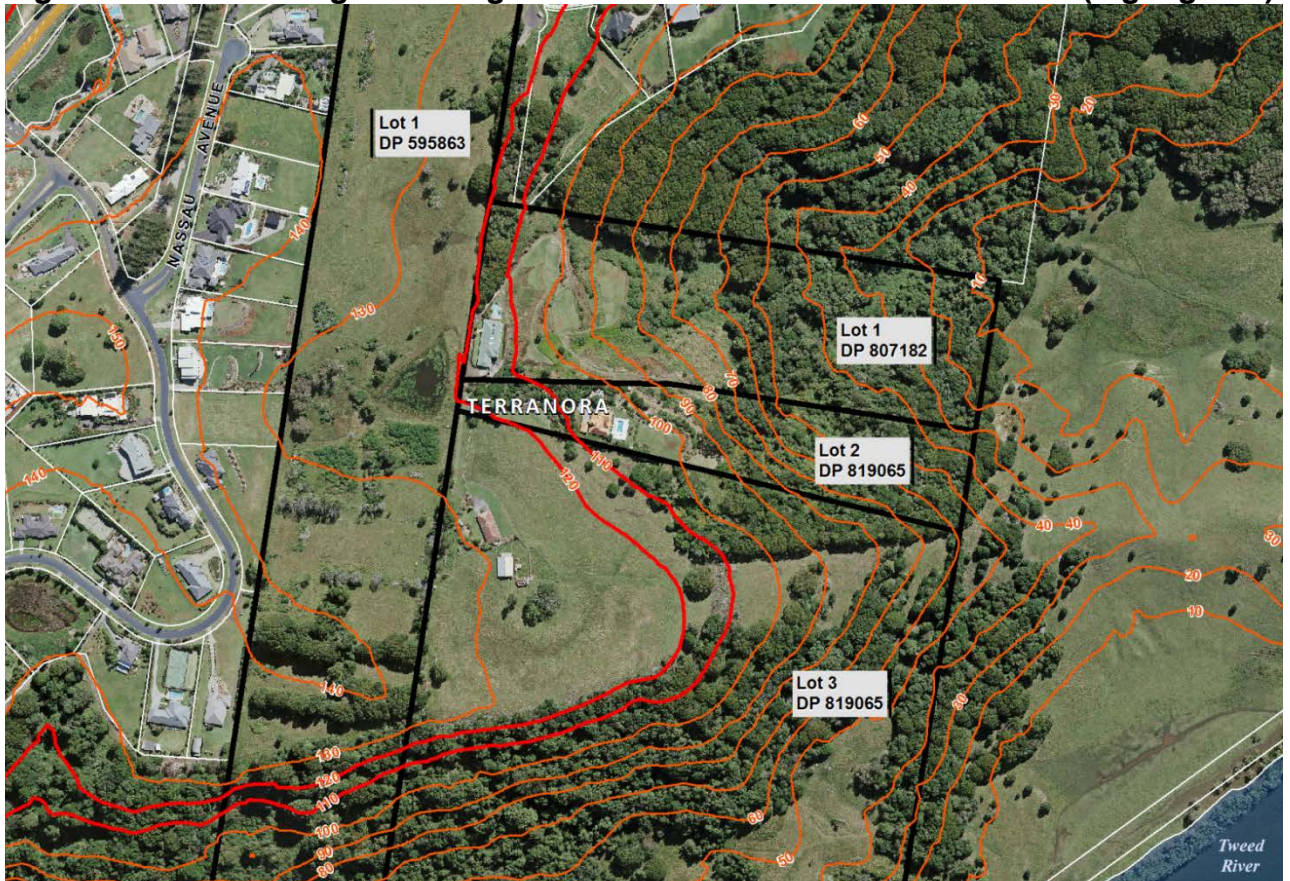


Figure 10: Aerial image showing the 110 and 120 metre AHD contours (highlighted)



## **Vegetation**

The proponent is proposing to expand the R5 Large Lot Residential zone on the grounds that the 7(d) zone boundary does not follow the current edge of existing vegetation, and states that “the zone boundary was incorrectly located and that the edge of the escarpment was the appropriate location”.

The objectives of the 7(d) Environmental Protection (scenic/escarpment) zone were not created to simply reflect the margins of existing vegetation and as such, other factors would have been considered in the original definition of the zone boundaries, as reinforced in previous actions of Council discussed above.

While existing vegetation will be taken into consideration when defining zone boundaries for application of the E zone guidelines prepared by the DPE, potential development envelopes and the intensity of development therein do not rely solely on the location of vegetation, and with scenic impact being highly significant, this and other factors should be considered when determining any change to the boundary of the R5 zone.

Should Council resolve to proceed with this planning proposal, further investigation is required to ensure that native vegetation will be protected and a net benefit achieved which protects and enhances significant ecological assets and does not detract from the scenic amenity of the escarpment. All buffers and setbacks must occur within the R5 zone and outside of any areas retained or protected for ecological purposes.

Until such time as further investigations are concluded, the extent of development and location of any change to the R5 zone boundary is not clear.

## **Water and Wastewater**

While the three existing lots on Winchelsea Way currently have water connections, no investigations have been completed to demonstrate that Council’s reticulated water and sewerage systems have capacity for an additional area to be connected, and as such, any increase in the area zoned R5 Large Lot Residential would need to substantiate ability to connect and capacity within the Banora Point Wastewater Treatment Plant catchment.

Should Council resolve to proceed with this planning proposal, a report will be required demonstrating the impact of connecting the additional area to Council’s Water Supply and Sewerage Systems.

## **Contamination**

A Contamination Report has been provided from 2004 for the earlier subdivision of Lot 1 DP 595863, and Lot 3 DP 819065 which does not cover the majority of the site.

As such, this report cannot be relied upon to address the issue of site contamination for the current proposal for the following reasons:

1. The report does not address the majority of the site;
2. Since 2004 potentially contaminating activities could have been carried out on the lots in the interim years.
3. The Report is to be read in conjunction with the 2004 subdivision proposal and is not to be used for any other purpose, and

4. There are now new National Environment Protection (Assessment of Site Contamination) Measure documents in place which set different Health and Environmental Investigation levels than in 2004.

Should Council resolve to proceed with this planning proposal, a site-specific contamination assessment will be required prior to public exhibition.

#### **OPTIONS:**

1. **Proceed with further investigations to determine the revised R5 Large Lot Residential zone boundary as proposed in this report, and subject to Council's satisfaction of the findings of these report, a planning proposal be referred to the DPE for a Gateway, or**
2. **Should investigations demonstrate that the site is constrained or visual impact will be significant, that the area to be rezoned and lot yield be reduced to reflect the extent of the constraints or potential impact, and a further report be brought to Council or**
3. **Proceed with the proponent's request and a planning proposal be referred to the DPE for a Gateway, or**
4. **Not proceed with preparation of a planning proposal.**

#### **CONCLUSION:**

Preliminary review of the request to extend the boundary of the R5 Large Lot Residential zone into the 7(d) Environmental Protection (scenic/escarpment) off Winchelsea Way has concluded that while the extent of development proposed by the proponent should be reduced, some level of development may be possible.

The geographic extent of any additional land to be zoned will be significantly influenced by the potential impact on the scenic amenity of the adjoining escarpment covered by the 7(d) Environmental Protection (Scenic/Escarpment) zone.

In determining the extent of any expansion of the R5 zone and consequent reduction of the 7(d) zone, it is proposed that a lower limit of the proposed zone boundary be established based upon the 110 or 120 AHD contour which will be modified in accordance with the findings of further investigation prior to sending the planning proposal to DPE for a Gateway determination.

Council is in receipt of a second planning proposal for a similar change to the R5 zone boundary at 225 Terranora Road, also within the escarpment, and has received another enquiry regarding subdivision in the escarpment further to the west. The potential cumulative impact of residential development within the escarpment requires this proposal to be considered in the broader strategic context and a clear understanding of Council's position on this matter.

Should the proponent not agree with the proposal to reduce the rezoning investigation area it is recommended that the request not be supported.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable

**b. Budget/Long Term Financial Plan:**

Not Applicable

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

**Consult**-We will listen to you, consider your ideas and concerns and keep you informed.

**Inform** - We will keep you informed.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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## 4 [PR-PC] Planning Proposal PP16/0003 - Filming on Private Land

**SUBMITTED BY:** Strategic Planning and Urban Design

Validms



**Civic Leadership**



**Strengthening the Economy**

### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
- 1.5 Manage and plan for a balance between population growth, urban development and environmental protection and the retention of economical viable agriculture land
- 1.5.2 Land use plans and development controls will be applied and regulated rigorously and consistently and consider the requirements of development proponents, the natural environment and those in the community affected by the proposed development
- 3 Strengthening the Economy
- 3.1 Expand employment, tourism and education opportunities
- 3.1.6 Support creative practitioners and entrepreneurs to access professional and business development opportunities, to enhance their contribution to the creative economy

### SUMMARY OF REPORT:

Council resolved at its meeting of 21 July 2016 to prepare a planning proposal for a Gateway determination that sought to amend Tweed Local Environmental Plan 2014 (Tweed LEP) to permit filming with development consent on rural zoned land for periods of time greater than that otherwise permitted as 'temporary' development.

NSW Department of Planning and Environment issued a Gateway notice on 23 August requiring public exhibition and referral to the NSW Rural Fires Service (RFS). Both actions have been implemented and no public submission was received; the RFS in their letter of advice of 28 September advised of 'no objection to the planning proposal'; noting only that any future development application would be required to address bushfire matters pursuant to s.79BA of the *Environmental Planning and Assessment Act 1979*.

The conditional timeframe for completing the LEP is 6 months.

It is recommended that the planning proposal (draft LEP) be referred to the Minister for Planning to be made.

### RECOMMENDATION:

**That:**

1. **Council notes the public exhibition, for which there was no public submissions received, and the advice of NSW Rural Fire Service raising no objection to the planning proposal;**
2. **The Planning Proposal PP16/0003 'filming' is approved; and**

3. **The Director Planning and Regulation is to forward Planning Proposal PP16/0003 to the NSW Minister for Planning & Environment with a request that the Plan be made pursuant to s.59 of the *Environmental Planning and Assessment Act 1979*, at the earliest time.**



## REPORT:

The background to the prevailing issue, the operation of the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, and necessity for this planning proposal are detailed in the attachments to this report.

In short, through the implementation of the NSW Government's 'standard instrument' LEP the permissibility of the 'filming' land-use changed, but only in the closed zones, which captures those where filming is more likely than not to occur within the Tweed owing to its outstanding natural beauty; for example on rural zoned land.

In response to this unplanned change in permissibility on rural zoned land the proposed LEP amendment through the planning proposal is to address this situation by amending cl.2.8 of Tweed LEP 2014. It is a relatively straightforward amendment, as shown by the 'red' amendment wording below:

### 2.8 Temporary use of land

- (1) The objective of this clause is to provide for the temporary use of land if the use does not compromise future development of the land, or have detrimental economic, social, amenity or environmental effects on the land.
- (2) Despite any other provision of this Plan, development consent may be granted for development on land in any zone for a temporary use for a maximum period of 52 days (whether or not consecutive days) in any period of 12 months.
- (3) Development consent must not be granted unless the consent authority is satisfied that:
  - (a) the temporary use will not prejudice the subject carrying out of development on the land in accordance with this Plan and any other applicable environmental planning instrument, and
  - (b) the temporary use will not adversely impact on any adjoining land or the amenity of the neighbourhood, and
  - (c) the temporary use and location of any structures related to the use will not adversely impact on environmental attributes or features of the land, or increase the risk of natural hazards that may affect the land, and
  - (d) at the end of the temporary use period the land will, as far as is practicable, be restored to the condition in which it was before the commencement of the use.
- (4) Despite subclause (2), the temporary use **of land for filming on rural zoned land or use** of a dwelling as a sales office for a new release area or a new housing estate may exceed the maximum number of days specified in that subclause.
- (5) Subclause (3) (d) does not apply to the temporary use **of land for filming on rural zoned land or use** of a dwelling as a sales office mentioned in subclause (4).

**OPTIONS:**

1. That the proposed LEP amendment as exhibited be referred to the NSW Minister for Planning to be made, or
2. That current LEP provisions be retained.

Option 1 is recommended.

**CONCLUSION:**

The potential benefits of filming in the Tweed are significant, both from the point of promoting the Tweed as a destination and flow-on economic benefits.

The conversion of Tweed LEP 2000 under the Standard Instrument Template has resulted in unexpected changes to the permissibility of some filming activities within the LEP's closed zones.

The proposed LEP amendment, which has the support of the Department of Planning and Environment, Rural Fire Service, and has attracted no public objection, will reinstate the prior permissibility of the filming use on rural land and allow a development application to be lodged for assessment. This will ensure that any future employment generating film industry proposals will have the ability to demonstrate their suitability for approval, which is seen to have potential economic benefits for the Tweed.

It is recommended that the LEP amendment be approved.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable.

**b. Budget/Long Term Financial Plan:**

No major impact on current Strategic Planning and Urban Design Unit work program.

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

**Empower**-We will give the community greater opportunity to participate in a transparent flow of information and feedback to Councillors who have been empowered as the Community representatives to make decisions in accordance with the Local Government Act 1993.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Attachment 1. Council Report of 21 July 2016 (ECM 4258210)

Attachment 2. Planning Proposal v1 as exhibited and referred (ECM 4258232)

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**5 [PR-PC] Variations to Development Standards under State Environmental Planning Policy No. 1 - Development Standards**

**SUBMITTED BY: Development Assessment and Compliance**

Valid



## **Civic Leadership**

### **LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:**

- 1 Civic Leadership
  - 1.4 Strengthen coordination among Commonwealth and State Governments, their agencies and other service providers and Statutory Authorities to avoid duplication, synchronise service delivery and seek economies of scale
  - 1.4.1 Council will perform its functions as required by law and form effective partnerships with State and Commonwealth governments and their agencies to advance the welfare of the Tweed community
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### **SUMMARY OF REPORT:**

In accordance with the Department of Planning's Planning Circular PS 08-014 issued on 14 November 2008, the following information is provided with regards to development applications where a variation in standards under SEPP1 has been supported/refused.

### **RECOMMENDATION:**

**That Council notes there are no variations for the month of October 2016 to Development Standards under State Environmental Planning Policy No. 1 - Development Standards.**

**REPORT:**

On 14 November 2008 the Department of Planning issued Planning Circular PS 08-014 relating to reporting on variations to development standards under State Environmental Planning Policy No. 1 (SEPP1).

In accordance with that Planning Circular, no Development Applications have been supported/refused where a variation in standards under SEPP1 has occurred.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable

**b. Budget/Long Term Financial Plan:**

Not Applicable

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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## CONFIDENTIAL ITEMS FOR CONSIDERATION

### REPORTS THROUGH THE GENERAL MANAGER IN COMMITTEE

### REPORTS FROM THE DIRECTOR PLANNING AND REGULATION IN COMMITTEE

- C1 [PR-PC] Development Application DA11/0022.01 for an Amendment to Development Consent DA11/0022 for a Tennis Complex Comprising a Clubhouse, 12 Fully Lit Tennis Courts and 52 Car Parking Spaces at Lot 465 DP 1144944 Henry Lawson Drive, Terranora; Lot 283 DP 873663 No. 89 Henry Lawson Drive, Terranora**

#### REASON FOR CONFIDENTIALITY:

This report is confidential as it discusses potential claims and complaints relating to a third party.

#### Local Government Act

This report is **CONFIDENTIAL** in accordance with Section 10A(2) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relating to the following: -

- (d) commercial information of a confidential nature that would, if disclosed:
- (i) prejudice the commercial position of the person who supplied it, or
  - (ii) confer a commercial advantage on a competitor of the council, or
  - (iii) reveal a trade secret.

Validms

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## Civic Leadership

#### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
  - 1.2 Improve decision making by engaging stakeholders and taking into account community input
  - 1.2.1 Council will be underpinned by good governance and transparency in its decision making process
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