

TWEED SHIRE COUNCIL MEETING TASK SHEET

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Action Item - PLANNING MEETING Wednesday, 16 November 2005

Action for Item 5 as per the Committee Decision outlined below.

ATTENTION:

TO BE RECOMMENDED TO COUNCIL FOR ADOPTION AS PER THE COMMITTEE RECOMMENDATION

TITLE: [PD] Draft Tweed Local Environmental Plan 2000, Amendment No 10 - Urban Release Area E

COUNCIL DECISION:

**Administrator Turnbull
Administrator Boyd**

RECOMMENDED that Council:

1. Pursuant to Section 68 of the Act, forwards the draft Local Environmental Plan Amendment No 10 – Terranora Urban Release Area (Area E), as per Appendix B, to the Department of Infrastructure, Planning and Natural Resources and requests the Department to forward the Plan to the Minister so the Plan can be made in accordance with the provisions of the Environmental Planning and Assessment Act 1979.
2. Enters into a Deed of Agreement with the relevant landowner to enable Lot 227, DP 755740, Fraser Drive, Terranora to be transferred to Council prior to the Plan being forwarded to the Minister.
3. Prepares a Development Control Plan (in accordance with the provisions of the *Environmental Planning and Assessment Act 1979*) to manage future development of the site.
4. Council shall not consent to development on the site known as Area E unless a Development Control Plan, Section 94 Plan, Master Plan/Concept Plan, Wetland Rehabilitation Plan and a Stormwater Management Plan have been approved for the land.

FOR VOTE - Unanimous

Agenda Report

TITLE: [PD] Draft Tweed Local Environmental Plan 2000, Amendment No 10 - Urban Release Area E

ORIGIN:

Strategic Town Planning

FILE NO: GT1/LEP/2000/10 Pt5

SUMMARY OF REPORT:

Consideration of this report was deferred pending a Public Workshop on the proposed draft Plan. A Public Workshop was held on Wednesday, 16 November 2005.

This report is now tabled again for Council's consideration. The content of the original report remains the same. The recommendation of the original report has been amended to make it obvious that development of the site cannot occur without a Council approved Development Control Plan for the site.

Draft LEP Amendment No 10 - Terranora Urban Release Area (Area E) and the accompanying Environmental Study were placed on public exhibition between Wednesday, 17 March 2004 and Friday, 7 May 2004. A total of 138 submissions were received from various sectors including state agencies, private entities and community members.

A summary and discussion of the submissions received with respect to the exhibited draft Plan are provided within this report. The overriding issues identified from the submissions include protection of the natural environment (wetlands and significant flora/fauna), provision of appropriate infrastructure such as water, sewerage, stormwater, traffic and transport etc, contaminated lands, agricultural land, conflicting land uses, suitable density and lot size issues, master planning, amenity and aesthetic issues.

As a result of the submissions received it is recommended the draft Plan be amended from that which was exhibited. The recommended changes are discussed within this Report and are included in the amended draft Plan in Appendix B. In principle these changes involve:

- Amending the zoning map of the exhibited draft Plan by increasing the area of the 7(a) and 7(d) Environmental Protection Zones in response to the DEC's concerns. This reduces the extent of the proposed 2(c) Urban Expansion Zone.
- Amending the zoning map of the exhibited draft Plan by deleting the proposed alignment of the Mahers Lane extension.

No submissions received prevent the rezoning of Area E in the manner stipulated in Appendix B. Significant issues raised through submissions can be comprehensively addressed through a Development Control Plan, and at the Masterplan and development assessment stages of the project.

It is recommended that Council resolve to adopt the recommended changes to the exhibited draft Plan (as per Appendix B to this Report), and in doing so, the amendment would be ready to be made by the Minister for Department of Infrastructure, Planning and Natural Resources. This action would be succeeded by the preparation of a statutory Development Control Plan.

RECOMMENDATION:

That Council:

- 1. Pursuant to Section 68 of the Act, forwards the draft Local Environmental Plan Amendment No 10 – Terranora Urban Release Area (Area E), as per Appendix B, to the Department of Infrastructure, Planning and Natural Resources and requests the Department to forward the Plan to the Minister so the Plan can be made in accordance with the provisions of the Environmental Planning and Assessment Act 1979.**
- 2. Enters into a Deed of Agreement with the relevant landowner to enable Lot 227, DP 755740, Fraser Drive, Terranora to be transferred to Council prior to the Plan being forwarded to the Minister.**
- 3. Prepares a Development Control Plan (in accordance with the provisions of the *Environmental Planning and Assessment Act 1979*) to manage future development of the site.**
- 4. Council shall not consent to development on the site known as Area E unless a Development Control Plan has been approved for the land.**

REPORT:

BACKGROUND

It is intended to provide a thorough and integrated planning framework by which to appropriately manage Area E. Parsons Brinckerhoff were engaged to prepare a comprehensive planning framework for the development of Area E which includes preparation of a:

- Local Environmental Study and Draft LEP;
- Development Control Plan and Structure Plan;
- Section 94 Contributions Plan.

The first stage of the project, preparation of an LES and draft LEP, to determine the capability of the site to be developed for urban purposes has been finalised. A copy of the draft LEP, as exhibited, is provided as Appendix A.

The other stages of the project, DCP, Structure Plan and S94 Plan, planning tools by which to manage development of the land, are currently being prepared. A copy of the first draft of the DCP is provided for Councillor information as Attachment C.

Area E is generally bound by Mahers Lane, Terranora Road, Fraser Drive and the Terranora Broadwater (Trutes Bay), Terranora (Refer to Figure 1 'Locality Plan'). It is approximately 297 ha in area and comprises fifty-seven cadastral allotments in seven consolidated or amalgamated property holdings and thirty-three allotments in individual ownership (Refer to Figure 2 'Area E Study Area Boundaries').

Area E is principally comprised of the following uses:

- the Lindisfarne Anglican Secondary School, on an approximately eight hectare site (Zoned 5(a) Special Use (School))
- approximately 52 hectares of SEPP-14 wetlands at the northern interface with Trutes Bay (currently zoned 1(b1) Agricultural Protection)
- approximately 237 hectares of rural lands (zoned 1(b1) Agricultural Protection) of which the major resource is 73 ha of Class 6 Specialist Use Agricultural lands, the majority of which are lying fallow.

Area E has historically been utilised for intensive agriculture, being row cropping and plantations. However, there has been a sustained long-term reduction of intensive agriculture within Area E due to urban development encroachments and pressures, limited financial return from produce, and biophysical limitations (requiring mechanised farming which is otherwise precluded by surrounding urban development), amongst others.

The purpose of the LES and draft LEP was to investigate Area E and determine the values of the agricultural land and its suitability for urban development, as per the *Tweed Residential Development Strategy 1991*. The LES identified a number of constraints and issues that require further management and consideration in the development of Area E for urban purposes. Of these, the management of traffic impacts, infrastructure provision and rehabilitation of environmentally sensitive areas are paramount.

The LES found that although there were issues which require further management and control, there were generally no constraints and issues to urban development of Area E that could not be resolved through the implementation of specific control provisions, design criteria, management measures, through amendments to the exhibited draft Plan, a future Development Control Plan or master plan for the site.

The draft LEP generally involves rezoning Area E from the predominant 1(b1) Agricultural Protection Zone, by excluding it from this Zone and including it in:

- approximately 187 hectares of 2(c) Urban Expansion zoned land (which includes area for the development of residential, commercial, recreational and community facilities, together with infrastructure provision) ;
- approximately 88 hectares of 7(a) Environmental Protection (Wetlands and Littoral Rainforests), particularly protecting the SEPP 14 wetlands (as rehabilitated);
- approximately 17 hectares of 7(d) Environmental Protection (Scenic/Escarpment) in particular protecting the visual qualities and environmental significance of the central drainage channel;
- approximately 1.5 hectares of 5(a) Special Use (School) for the Lindisfarne Anglican Secondary School.

This Report identifies the nature of the submissions received, the recommendations with regards to amendments to the exhibited LES and draft Plan and a final draft Plan (including Clauses and a Zoning Map) Amendment 10.

Figure 1 Locality Plan

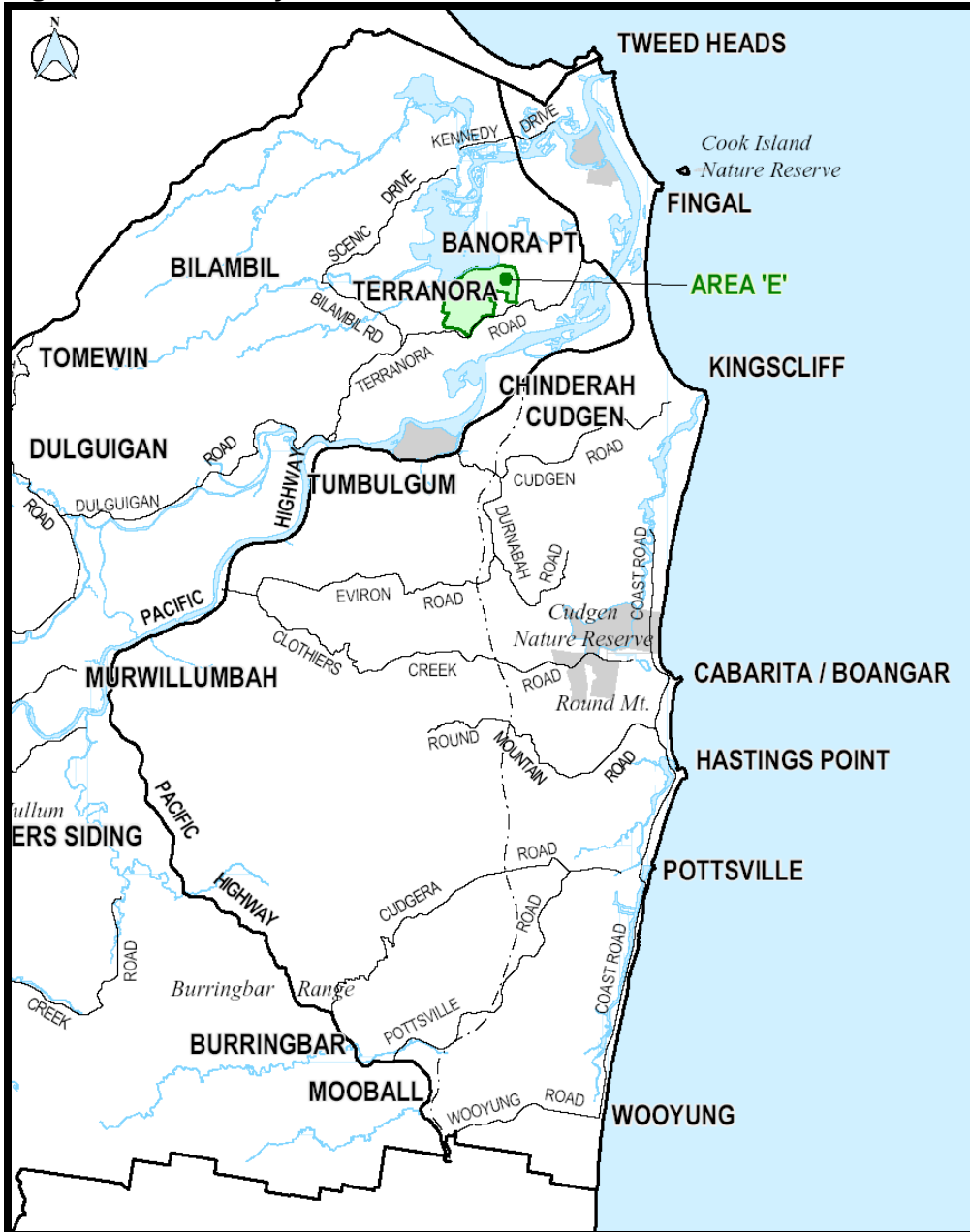
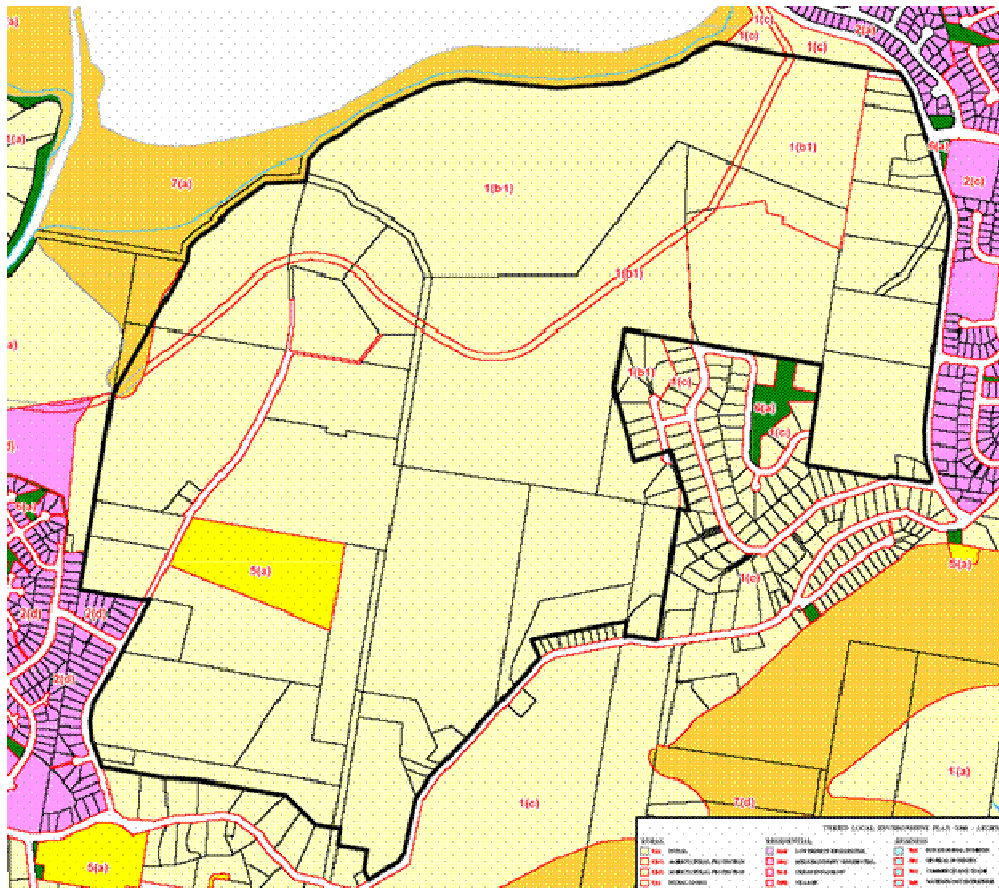


Figure 2: Area E Study Area Boundaries (as indicated by the bold outline)



Figure 3: Current Zoning of Area E (Source: Tweed LEP 2000)



PUBLIC EXHIBITION OF STUDY AND DRAFT PLAN

Pursuant to Section 66 of the *Environmental Planning & Assessment Act 1979*, the draft LEP and LES were placed on public exhibition from 17 March 2004 through to 7 May 2004. A public meeting was held on 29 April 2004 at the Terranora Community Hall. Council received a total of 138 submissions from State Agencies, Council itself, commercial and environmental entities and residents during the period of public exhibition.

Council received a total of seven (7) submissions from the following State Government Agencies:

- Department of Primary Industries (DPI) NSW Agriculture
- NSW Department of Infrastructure, Planning and Natural Resources
- Department of Environment and Conservation
- Mineral Resources NSW
- NSW Rural Fire Service
- Roads & Traffic Authority
- Department of Education and Training

Tweed Shire Council (Traffic and Transport Engineering Section) made one submission

Council received a total of six submissions from the following entities:

- Lindisfarne Anglican Secondary School
- Friends of Terranora
- Caldera Environment Centre
- Tweed Heads Environment Group Inc
- Tweed District Residents & Ratepayers Association
- Banora Point Residents Association

The remaining 124 submissions were received from community members, including residents and business owners.

A Submissions Matrix has been prepared providing comments on the grounds of the submissions (refer to Attachment A). A number of common issues were identified, and which overlap but are presented separately to ensure a complete picture is presented, have been addressed in the body of this report.

The submissions can be generally classified into one of the following three types:

- Submissions opposing the proposed development on a number of grounds
- Submissions objecting to the development proposal in its current form, with suggested development parameters for further consideration
- Submissions supporting the proposal on a number of grounds

STATE GOVERNMENT SUBMISSIONS

1. Department of Primary Industries DPI (NSW Agriculture)

DPI acknowledged that the use of this area for urban development would seem inevitable. However, they noted that the Study did not adequately record or assess cultural significance and landscape values of Area E, nor did it identify areas of higher agricultural land resources that may be retained as community gardens. Similarly no transitional arrangements to avoid conflicts between agricultural and urban uses were outlined.

Comment: The LES includes a critical evaluation of the ability of Area E to support continued agricultural practices, including historical recognition of the agricultural practices that occurred. The evaluation included the identification of 'Class 6 Specialist Use' Agricultural Land. The retention of a portion of land for community gardens hasn't previously been undertaken in other urban residential estates and the need, suitability and the success of such a venture in this locality is questionable. Community gardens are generally situated in high/medium density locations where residents don't normally have access to a yard. Area E is envisaged to have a median lot size of 800m² which invariably provides enough land to site a house and still have room for a yard to pursue leisure pursuits such as gardening.

It is envisaged the majority of existing farmland will be developed for urban housing. This will inevitably result in the loss of the rural landscape. However, the scenic landscape of the area is addressed through the preservation and rehabilitation of significant environmental corridors, through the provision of vegetated ridgelines and through the vegetated buffers to existing rural residential areas. Other design characteristics such as streetscape, built form etc, should be addressed through a DCP and masterplan (refer to Attachment C - draft DCP, for an indication of how these design issues can be implemented).

The remaining agricultural practices are located at the eastern and southern periphery of Area E, in areas that would be generally developed first due to existing and proposed infrastructure sequencing and provision. As a result there is little requirement for transitional arrangements to be adopted in this instance.

Recommended Action: No change to the draft LEP as a result of the issues raised by NSW Agriculture.

2. NSW Department of Infrastructure, Planning and Natural Resources (DIPNR)

DIPNR supports the proposed 50 metre buffer around wetland in area zoned 7(a), and considers that the south-east corner of the area mapped as 7(a) should include wetland that is currently being drained. If it is not included, then this land should be retained as open space parkland and not be filled. Further, DIPNR indicate that no development should intrude into areas zoned as 7(a) and 7(d).

Comment: DIPNR's support of the wetland buffer is noted. The area referred to as 'draining wetland' has been identified to be a low-lying area into which water 'ponds' from elevated areas of Area E. Hence, the minimal ecological significance of this area does not merit any protective zoning.

The intrusion of any development into areas zoned as 7(a) and 7(d) will be regulated under the *Tweed LEP 2000*, through existing planning controls and land use zoning tables.

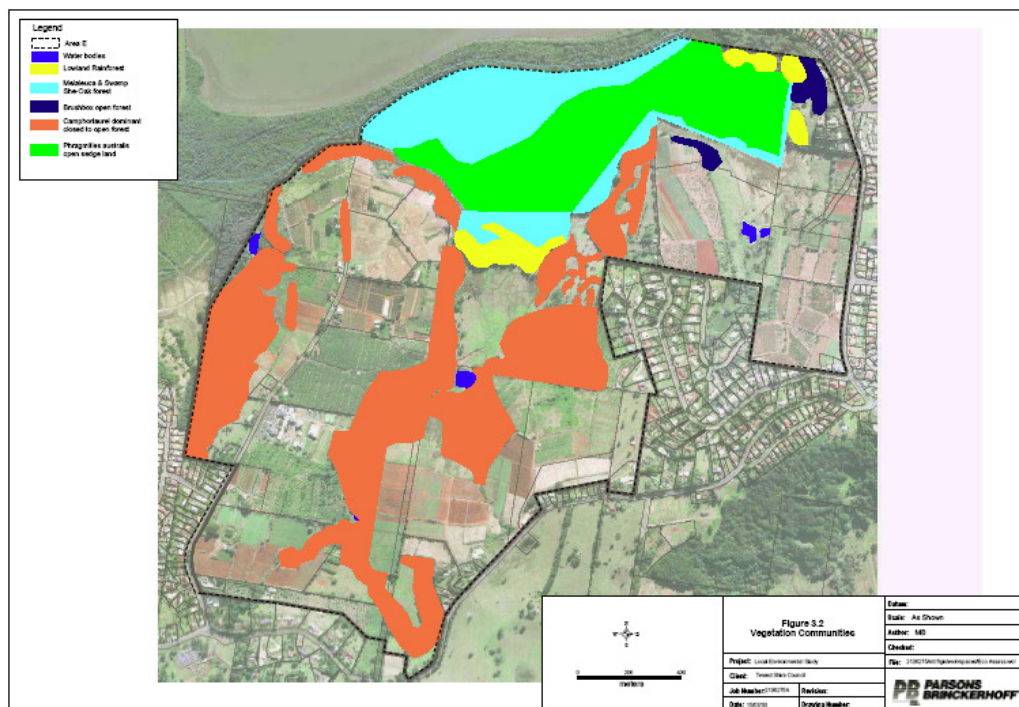
Recommended Action: No change to the draft LEP as a result of the issues raised by DIPNR.

3. Department of Environment and Conservation

The Department of Environment and Conservation (DEC) submission comprehensively outlines a number of concerns regarding the proposed LES and draft LEP. The main grounds of the submissions were in the following areas:

- Flora and Fauna (including SEPP14 wetland, remnant vegetation protection and rehabilitation). Figure 4 provides a map illustrating vegetation communities on site.
- Buffering of drainage lines and waterways.
- Biting Insects (salt marsh mosquito).
- Aboriginal Cultural Heritage.
- Stormwater Management.
- Contaminated Land.
- Sewerage Management.

Figure 4



Concerns with Flora and Fauna/ Buffering of Drainage Lines and Waterways:

- The DEC supports the exhibited draft LEP identifying the SEPP 14 wetland as an Environment Protection (7a) Zone. However, due to the steepness of the site and an increase in quantity and speed of stormwater runoff as a result of increased development, the proposed 50m buffer is considered inadequate. DEC

recommended that a minimum of 100m in vegetated buffer between urban development or infrastructure and the prescribed boundary of the wetland be included in the LEP.

- The camphor laurel remnant on the western boundary has been Zoned 2(c) Urban Expansion. The central camphor laurel remnant is proposed to be Zoned (7d) Environmental Protection and, south of the school, it is proposed to be Zoned 2(c) Urban Expansion. Restoration and rehabilitation of these areas, including removal of camphor laurel, under a bush regeneration plan is recommended to increase biodiversity values and assist in improving the Terranora Broadwater water quality.
- The remnant vegetation may be utilised as a corridor for movement between areas of suitable habitat. The proposed 7(d) Environmental Protection Zone includes only part of the central drainage line, and should be extended to encompass the full extent to the southern study area boundary. Similar provision should be made for inclusion in the bush regeneration plan.
- The Swamp Sclerophyll Forest identified in the north-western boundary of the site is recognised as a significant community in the NSW North East Regional Forest Agreement and the Tweed Vegetation Management Plan 2003. The proposed 2(c) Urban Expansion Zoning is not supported. It is recommended that this community be Zoned 7(a) Environmental Protection with a minimum 50m vegetated buffer.
- The Brush Box remnant in the north-eastern portion of the site has been identified as supporting threatened species and hollow-bearing trees. The draft LEP includes these areas in the 2(c) Urban Expansion Zone and within designated road corridors which is not supported. Instead, these communities should be incorporated into the 7(a) Environmental Protection Zone with a minimum 50m vegetated buffer.
- The LES identified Closed Forest or Swamp Forest communities which are endangered under the *Threatened Species Conservation Act 1995* and provide potential habitat for the threatened Mitchell's Rainforest Snail. The approved Mitchell's Rainforest Snail Recovery Plan 2001 states that 'all lowland rainforest and swamp sclerophyll forest remnants and vegetated areas within 50m of SEPP 14 Coastal Wetlands in Tweed, Byron and Ballina Shires be protected from clearing or development in relevant Local Environmental Plans'. Therefore, to protect this type of vegetation community and potential snail habitat, all Lowland Floodplain Rainforest should be Zoned Environmental Protection with a minimum 50m vegetated buffer.
- The integrity of riparian buffers should not be compromised by positioning of stormwater treatment infrastructure or recreational facilities of a significant nature such as car parks, access roads, buildings or toilet facilities. A minimum buffer of 50m is required adjacent to areas of national, regional and local significance (e.g. wetlands, native vegetation). Infrastructure (such as roads) should not be included in the buffer.

Comments regarding Flora and Fauna/ Buffering of Drainage Lines and Waterways:

Verbal discussions were had with DEC officers to discuss the issue of the buffer to the wetlands. It was agreed that the proposed 100m buffer could be made up of 50m of vegetation and fifty metres of other non vegetated land, which can include infrastructure such as roads.

Extension of the 7(a) Environmental Protection Zone will ensure that other areas of SEPP 14 or adjoining areas are better protected from upstream impacts. These include:

- Melaleuca Forest in the north-west corner of the site
- Mangrove Shrubland in the north of the site (incorrectly mapped in the LES and which requires this updated level of protection)
- Phragmites Open Sedgeland in the north-east of the site

Further, inconsistencies between the vegetation communities identified in the field and those mapped in Figure 3.2 of the LES, require additional areas, referred to by DEC, to be protected because of their recognised local and State conservation values. These areas will be included in either the 7(a) or 7(d) Environmental Protection Zones. This extension of the Environmental Protection Zone will provide for the increased protection of potential habitat (ie Lowland Rainforest) for the Mitchell's Rainforest Snail, although it is not expected that the site supports a population of this species as outlined in Section 3.1.3.2 of the LES.

As a result of the DEC submission, a review of the vegetation community descriptions in the LES was undertaken. DEC advised that the original description in the LES does not adequately describe the variation in composition, habitat and biodiversity values of the various areas of Camphor Laurel Dominant Closed to Open Forest on the site. The Camphor Laurel community on the western boundary of the site is low in species diversity and structural diversity and almost solely comprises Camphor Laurel. While this community provides important bird habitat (particularly for pigeons and fruit doves), it does not provide the same level of ecological values as the Camphor Laurel community that runs from south to north in the centre of the site. This community has an emergent canopy of predominantly Camphor Laurel, but is much more diverse in the understorey, comprising predominantly Lowland Rainforest. Therefore, while some of the Camphor Laurel community (and avian habitat) in the west of the site will be retained as part of the extension of the Environmental Protection Zone outlined above, not all of this community warrants protection as significant vegetation in the area.

The proposed LEP amendment includes Clause 53A(3) which requires a Wetlands Rehabilitation and Management Plan to be prepared and must be complied with prior to Council giving consideration to the Consent to such development. Further, given that the wetland is designated as a SEPP 14 wetland an EIS will need to be prepared by the proponent.

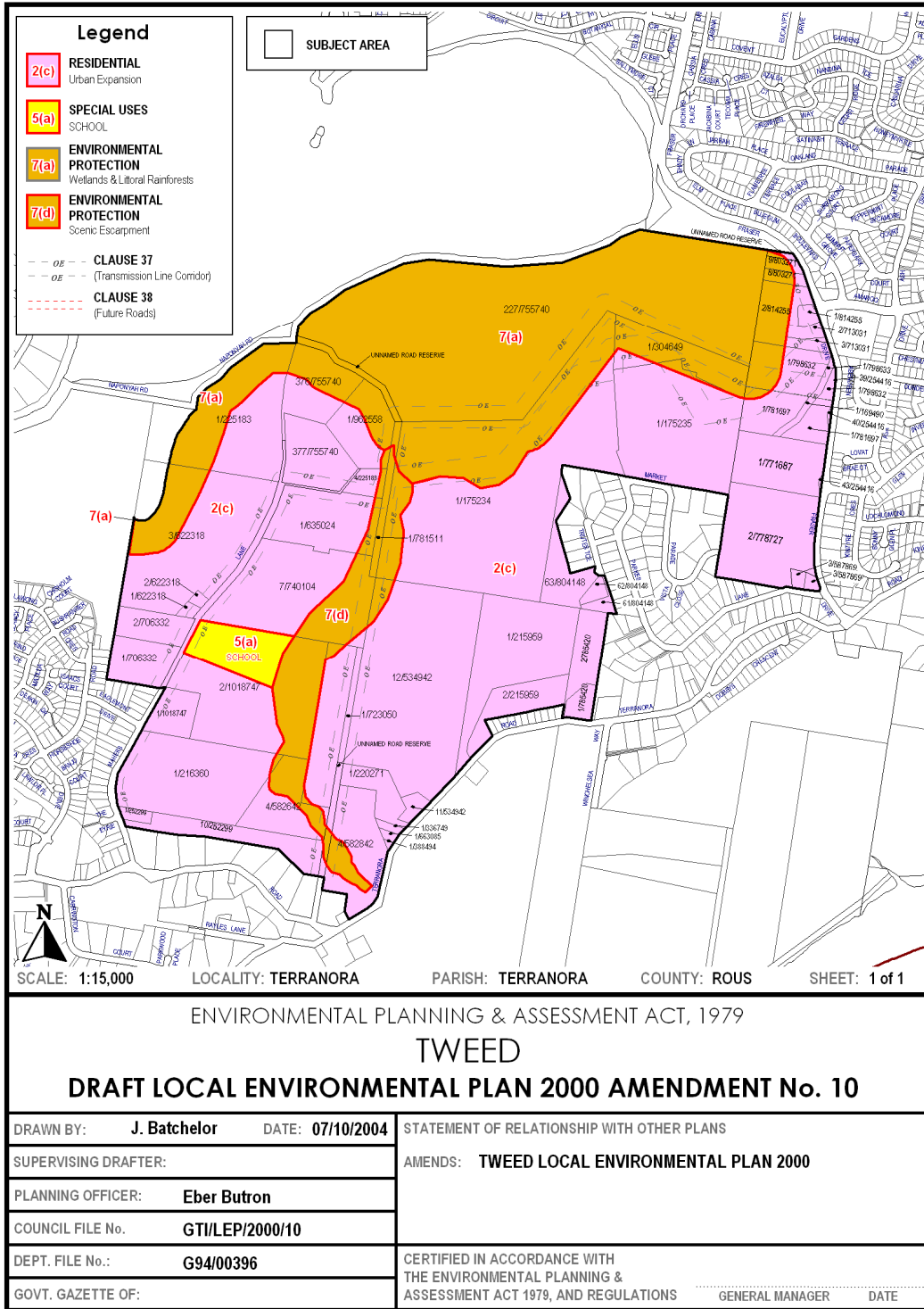
Some infrastructure, such as a water pipeline and associated access tracks, already exists within areas of the proposed 7(a) or 7(d) Environmental Protection Zone. These are not proposed to be removed as a result. Development of such infrastructure can sensitively occur to minimise disruption to habitat integrity, via the preparation of relevant management plans.

Recommended Environmental Actions:

As a result of the issues raised by the DEC, changes to the extent of the 7(a) Environmental Protection (Wetlands and Littoral Rainforests) and the 7(d) Environmental Protection (Scenic/ Escarpments) are required to the zoning map. Refer to Figure 5 and Appendix B, which provides an illustration of the change in zone boundaries as a result of DEC's submission

NOTE: A copy of the amended draft LEP map was forwarded to DEC for their comment. DEC responded in a letter dated 29 October 2004 DEC confirming their support for the suggested amended LEP map shown in Figure 5 and Appendix B.

Figure 5



Biting Insects (Saltmarsh Mosquito) Concerns:

The LES states that parts of the Terranora Broadwater SEPP 14 wetlands have been 'previously modified with the resulting effect being a change from a largely freshwater to a saline hydraulic system'. Consequently there has been an increase in the populations of the Saltmarsh Mosquitos. The LES recommends the alteration of the wetland saline hydrology to a freshwater regime which would reduce the mosquito problem. DEC

requires further evidence supporting the justification to alter the wetland hydrology to a freshwater regime for the purpose of reducing the mosquito problem.

Any clearing, levee construction, drainage work or filling within a SEPP 14 wetland is listed as 'Designated Development', requiring the preparation of an Environmental Impact Statement (EIS) and the approval of the DIPNR.

Biting Insects (Saltmarsh Mosquito) Comments:

Section 3.1.3.6 of the LES includes anecdotal evidence from Council Entomologist testifying to the ability of the wetland hydrology to be altered to a freshwater regime. Further studies are required to determine appropriate measures for the rehabilitation of the wetland areas and feasibility of mosquito management in the SEPP 14 wetland area.

Proposed Clause 53A(3)(b) includes specific provisions for a Wetland Rehabilitation and Management Plan. This Plan is to identify the way in which the wetland is to be restored and managed, to restore freshwater wetland values and minimise breeding habitat for saltwater mosquitoes and biting midges. Proposed development must comply with this Plan for Council to give consent.

The requirement for the preparation of an EIS and subsequent approval of the DIPNR is noted. However, such a process would be conducted external to the proposed LEP amendment.

Recommended Actions

No change to the draft LEP as a result of this issue raised by DEC.

Aboriginal Cultural Heritage Concerns:

The LES has not adequately addressed Aboriginal archaeological heritage. This assessment must include a search of the DEC's Aboriginal Heritage Management Information System (AHIMS) to ascertain whether any objects or places occur within or surrounding the study area, and undertake consultation with the local Aboriginal community and Land Council.

It is noted that comment was sought from the Tweed Byron Local Aboriginal Land Council with no response. The local Aboriginal community was not consulted. It is recommended that written advice from both these entities be sought.

Aboriginal Cultural Heritage Comments: NSW National Parks and Wildlife's (NPWS) correspondence dated 15 June 2004 contains the results of an AHIMS search for Area E. The AHIMS search identified that no Aboriginal objects or places occur within Area E. A number of sites occur outside the boundaries of Area E and would not be directly impacted by the development of Area E.

No response from the Tweed Byron Local Aboriginal Land Council to the Section 62 Consultation (under the *Environmental Planning and Assessment Act 1979*) was received. Further telephone calls, messages and facsimile messages were made to the Land Council on 3 and 4 June 2003 for which no response was received.

Significant ground disturbance from previous intensive agricultural practices has substantially altered the natural Area E landscape, decreasing any potential presence of Aboriginal artefacts. Aboriginal sites (including places and objects) are protected under the *National Parks and Wildlife Act 1974*.

Tweed LEP 2000 currently contains “Clause 44 – Development of Land within likely or known archaeological sites” which provides for the protection of aboriginal archaeological sites. As a consequence, future development proponents will be required to address this issue as part of any development application process.

Recommended Actions

No change to the draft LEP as a result of this issue raised by DEC.

Stormwater Management Concerns:

The DEC supports the preferred treatment Strategy Mitigation Option 4 (treatment train approach) in the LES which recommends the use of rainwater tanks for laundry, hot water, toilets and external uses grassed swales, amongst others. DEC also states that these stormwater management strategies should be a mandatory component of the Stormwater Management Plan to be developed and should be detailed in the draft LEP.

The DEC also ventured further comments regarding the proposed Stormwater Management Plan in the LES, including:

- Complimenting the ‘redundancy concept’ which builds a contingency to ensure that necessary performance is achieved.
- The stormwater management system costings assessment also fails to account for the financial benefits accruing from rainwater tanks by reduced demand on existing infrastructure and deferring the need for augmentation of the water supply system.
- The proposed low flow pipes from the wetlands appear to significantly improve the ability of the stormwater management system to mimic flows downstream of the site and should be a mandatory component of the Stormwater Management Plan.
- The assessment of stormwater quantity impacts does not appear to address the impacts of rainwater tanks in detaining stormwater flows. This issue should be addressed and the need for detention basins reconsidered.
- Slightly larger tanks (ie. 10000L) more effectively meet the demands of residents on the North Coast. It is therefore recommend that a 10,000L tank be considered as the minimum size to optimise the reduction in potable water demands.

Stormwater Management Comments:

A water quality assessment was undertaken for the urbanisation of Area E. The assessment included the estimation of expected stormwater pollutant loads and the performance and cost of various stormwater management strategies to meet Council’s *Urban Stormwater Management Plan*. The estimated capital and maintenance costs provided in the LES were for the entire system and were not categorised as Council, developer or resident costs. It is a requirement that the developer provides all capital costs for the stormwater management infrastructure with the exception of the rainwater tanks. Residents typically meet rainwater tank installation and maintenance costs. Some Councils provide cash incentive to encourage their use.

It is expected that the demand for potable water would be lower for residents with rainwater tanks, resulting in lower water rates for residents. The installation of rainwater tanks may have additional cost benefits as the lower demand for reticulated water may defer the upgrade of existing potable water systems, but a total cost benefit analysis was not required as part of the LES and will not be undertaken at this time.

In response to DEC, Parsons Brinckerhoff have suggested that the low flow environmental pipe option be adopted for any stormwater treatment wetlands within Area E to better mimic natural flows. A long term water balance would be required to confirm the size of any low flow pipes to ensure that the wetlands do not drain and impact the health of wetland plants. These stormwater management plan provisions are to be included as part of the DCP for Area E.

The draft LEP (Appendix 1) currently requires a Stormwater Management Plan to be prepared for the site to the satisfaction of Council, and in accordance with the Tweed Urban Stormwater Quality Management Plan. It is considered that this, in conjunction with a DCP, provides Council with adequate statutory management of this issue.

Rainwater tanks will provide some benefit in reducing stormwater runoff volumes by retaining rainwater for household use. The MUSIC model used in the assessment of stormwater treatment strategies accounted for this on a regional scale by representing the rainwater tanks as a pond which could retain stormwater for meeting typical urban non-potable water demands. When the tanks (ponds) were full, excess flows were directed to the stormwater treatment system of grassed swales, bio-retention trenches and wetlands. As the model was run on a daily timestep over an average year, the annual stormwater volumes retained and used by residents could be estimated. The model estimated that the developed unmitigated average annual flow of 3722 ML/yr could be reduced to around 3300ML/yr with the treatment train stormwater management strategy that includes rainwater tanks, and wetlands.

The water quality modelling assumed each allotment would have a 7,500 litre rainwater tank. The tanks were assumed to have a low flow bypass of 1l/s to allow for the bypass of first flush. Once the tanks are full, any excess water will overtop the storage and be directed towards the swales and bio-retention trenches. The size of the rainwater tanks was based on a typical household tank size, however a long term daily water balance could be undertaken to determine the optimum size for the Tweed Area E.

The requirement for the stormwater management strategy identified as Stormwater Mitigation 4 Option (treatment train approach) and the undertaking of long-term water balance modelling to determine the low flow bypass requirements of stormwater treatment wetlands and the optimum rainwater tank size to ensure the maximum capture and re-use of rainwater should be included within the management guidelines of the DCP for the area.

Recommended Actions: No change to the draft LEP as a result of this issue raised by DEC.

Contaminated Land Concerns:

The DEC supports the proposed conditions contained in Section 4 of the LES requiring a proponent to undertake detailed contamination assessments and necessary remedial works at the development application stage. DEC recommend that these assessments

be undertaken as early as possible so that Council can ensure the land is suitable for its intended use.

Contaminated Land Comments:

Council engaged the services of Mr Marc Salmon (JBS Environmental), a New South Wales EPA accredited site auditor (for contaminated land) to further investigate contamination within Area E. In correspondence dated 15 March 2004, JBS Environmental's interim audit advice stated *'no information was revealed during the review of (relevant) documents or a site inspection which would preclude the rezoning of the site to a residential with accessible soil landuse provided measures are in place to ensure that the potential for contamination and the suitability of the land for any proposed use are assessed once detailed proposals are made'*.

Clause 53A(2)(b) in the draft LEP amendment requires that the extent of contamination be known prior to development consent. This will ensure that an area can be remediated to the required EPA Standard to enable the desired use.

Further to the general assessment for sensitive land uses, prior to any works occurring, it is recommended that a statutory Site Audit Statement approving the proposed land use be secured from a NSW accredited site auditor for each prospective allotment, infrastructure areas, and all proposed public access areas.

Recommended Actions:

No action required to draft LEP as a result of this issue raised by DEC.

Sewerage Management Concerns:

The DEC noted that the proposed Area E development (and its predicted population) will be serviced by the Banora Point Sewerage Treatment Plant, bringing it very close to its maximum capacity. DEC also noted that the consent to upgrade the plant has been granted, but it is understood works have not yet commenced.

Sewerage Management Comments:

The existing Banora Point sewage treatment plant has existing capacity for the Area E population, but would need upgrading to support all proposed developments within its catchment. Council is currently reviewing what options they have to upgrade the treatment capacity and identify what effluent discharge and reuse options are available to meet current environmental discharge standards.

Recommended Actions:

No changes to the draft LEP are required as a result of this issue raised by DEC.

4. Mineral Resources NSW

Mineral Resources NSW is satisfied that proposal will not adversely impact on potential or existing mineralisation or extractive resources.

Comment: Mineral Resources NSW comments are noted.

Recommended Action: No change to the draft LEP as a result of the issues raised by Mineral Resources NSW.

5. NSW Rural Fire Service (RFS)

The NSW RFS support the proposed draft LEP Amendment, however indicated the LES does not adequately address bushfire issues, with the need for residential development to comply with *Planning for Bushfire Protection 2001*. In particular access/egress, water for fire fighting activities and provision of Asset Protection Zones.

Comment: Clause 39A "Bushfire Protection" of TLEP 2000 also provides for bushfire issues to be addressed at the development application stage. The *Planning for Bushfire Protection 2001* requirements for access/ egress, provision of Asset Protection Zones and water provision for fire fighting can be dealt with through a specific Development Control Plan objectives (which will subsequently need to be considered by the developer when they formulate the Master plan) at the development application stage. Clause 39A "Bushfire Protection" of TLEP 2000 also provides for bushfire issues to be addressed at the development application stage.

It is considered that the NSW Rural Fire Service State interests are a consideration in the preparation of the Development Control Plan.

Recommended Action: No change to the draft LEP required.

6. Tweed Shire Council

Council's Traffic and Transport Engineer raised nine issues from Section 3.8 (Traffic and Access) of the LES that required clarification. Attachment B provides an amended Section 3.8 (Traffic and Access) reflecting issues raised by Council's Traffic and Transport Engineering section as well as anomalies identified during the public exhibition of the LES and draft LEP. These issues are discussed below.

External Trip Concerns: Section 3.8.2.1 of the LES claims most external trips are to the Pacific Highway. Assuming 'external' means outside Area E, Council traffic data indicates that only 50% of traffic access the highway, the remainder accessing Tweed Heads and Tweed South.

External Trip Comments: Section 3.8 shown as Attachment B reflects the information supplied by Council indicating about 50% of the traffic associated with Area E is likely to access the Pacific Highway. This information supersedes the previous conceptual work undertaken by PB in the LES. This information also reflects the work undertaken by Vietch Lister Consulting (VLC) whose Strategy was adopted by Council at its Ordinary Meeting of 2 March 2005.

Recommended Action: No change to draft LEP as a result of this issue.

Public Transport Concerns: Section 3.8.2.4 of the LES states that the bus routes need to be amended to serve Area E from early in its development. This is considered essential and for this to occur effectively and efficiently, the Mahers Lane extension needs to be completed at Stage 1. It is recommended that this is a condition of the LES and should be referred to the Public Transport Group for comment.

Public Transport Comments: This requirement is identified within the draft LES in Section 3.8.2.4 and Section 3.8.7.4. This issue can be addressed through the draft DCP for the study area.

Recommended Action: No change to the draft LEP as a result of this issue.

Traffic Volume Concerns: Table 3.4.2 of the LES appears to be incorrect stating an existing capacity of only 9000vpd which then causes volume/capacity ratios to be well over capacity (ie Terranora Road v/c = 1.61 or 61% over capacity). If in fact this table is not corrected then the LES should not be considered. The data in the table does not reflect the dialogue in Section 3.8.5.2 which claims to have a highest v/c of 1.16.

Traffic Volume Comments: Table 3.4.2 as exhibited is erroneous. The correct Table 3.4.2 is shown in Attachment B. This Table illustrates the current estimated traffic carrying capacity and also the remaining available capacity on the adjoining road network. This traffic analysis reflects the findings of the work undertaken by Vietch Lister and adopted by Council. Council adopted the work undertaken by Vietch Lister for Banora Point and Tweed Road Development Strategy at its Ordinary Meeting of 2 March 2005.

Recommended Action: No change to the draft LEP required.

'Traffic Volume Split' Concerns: Section 3.8.5.2 of the LES assumes certain traffic volumes splits. It is not indicated where from or why these were chosen, together with the accuracy of the comments and tables. However the Veitch Lister Consulting (VLC) review of the TRDS indicates through Council's model that traffic from Area E can be accommodated provided the TRCP works program is implemented.

The LES allocates many pages to reproducing VLC's findings and Council's works program but insufficient space to assessing the unacceptable impact of Area E traffic 'short cutting' through Amaroo Drive and other local roads.

'Traffic Volume Split' Comments: Attachment B now reflects the result of the work undertaken by VLC on behalf of Council (only recently made available by Council) as this work supersedes the previous conceptual work undertaken by PB in the draft LES. In this regard Section 3.8.5.2 of the LES now highlights the likely distribution of traffic given the road network structure and likely directional distribution of traffic. In particular, the report now illustrates the likely dissipation of Area E traffic through the adjoining road network.

Attachment B includes comments in relation to the potential 'rat running' through the adjoining local road network. In addition, it indicates that further investigations are required as part of more detailed Local Area Traffic Management (LATM) treatments in response to the development of Area E. These studies would need to be undertaken prior to the development of Area E and would require significant community input in relation to the proposed LATM treatments. These requirements can be imposed through the draft DCP, requiring these works to be undertaken at the cost of the developer and approved by Council Engineers.

Further, draft DCP (Attachment C) illustrates 3 alternate potential routes for the Mahers Lane extension. If the preferred route (Option A) is implemented the issue of the

potential "rat-runs" through Amaroo Drive could possibly be reduced or eliminated. This option would also alleviate further traffic pressures on Terranora Road.

Recommended Action: No specific amendments to the draft LEP are required as a result of this issue.

Intersection Design Concerns: Section 3.8.6 of the LES proposes a cross roads intersection with Fraser Drive and Amaroo Drive via traffic signals or a roundabout.

Both treatments are not considered satisfactory, as they would facilitate Area E through traffic onto Amaroo Drive identified by VLC as undesirable and clearly it will be a community concern. Traffic signals require RTA NSW approval which is unlikely in any case as they would be relatively isolated. The signals and roundabout have excessive queue lengths for the scenario modelled and are considered unacceptable. Council is concerned how the intersections' worst level of service (LOS) is 'B' & 'D' respectively. The full AASIDRA results for each intersection should be included as they would enable proper scrutiny and allow the approaches to be assessed.

This section needs to be reviewed with a more acceptable intersection treatment that is separated from Amaroo Drive and including physical traffic control devices to restrict 'rat running' through Amaroo Drive.

Intersection Design Comments: Attachment B now reflects Council's requirements. It is noted that the proposed intersection arrangements are 'schematic concepts'. As the intersection concepts are not final designs they will be subject to further investigation at later stages, particularly in the detailed planning for the development of Area E. The required intersection analysis results (AASIDRA) have also been provided as an attachment to the LES.

Attachment B indicates that Council's preferred level of performance for intersections during peak periods is a LOS 'C' to 'D'. These requirements can be imposed on developers through the DCP. These works would need to be undertaken at the cost of the developer and approved by Council Engineers.

Recommended Action: No require specific amendments to the draft LEP required as a result of this issue.

General Proposal Concerns: The proposals included in Section 3.8.6.2 of the LES are not considered appropriate and are too vague, including simply stating LATM is required in conjunction with public consultation. The LES needs to recommend a solid outcome such as a condition of any development that this will be required. Vertical displacement devices will not be approved due to noise issues and similarly single lane slow points are not acceptable and should be removed from the LES.

Much more detailed work is required on the Fraser Drive - Mahers Lane intersection and all AASIDRA input and output data is to be included in an Annexure.

General Proposal Comments: Attachment B reflects Council's requirements in relation to the LATM treatments. It is also noted that potential LATM concepts can only be nominated at this stage of the LES as further work is required to determine the most appropriate LATM treatments. These requirements can be imposed on developers through the DCP. These works would need to be undertaken at the cost of the

developer and approved by Council Engineers. These works are to be included as part of a S94 Plan specific for the study area.

Attachment B indicates that the Fraser Drive-Mahers Lane intersection is only a conceptual intersection arrangement as the location and route of the Maher's Lane extension (particularly where intersecting with Fraser Drive) is yet to be finalised. The intersection concept is not a final design and thus it will be subject to further investigation at later stages of the process (DCP, S94 Plan and development applications) and prior to the development of Area E. The required AASIDRA intersection analysis results have been included as Annexure B of this Report.

Recommended Action: No specific amendments to the draft LEP required as a result of this issue.

7. Roads & Traffic Authority

The RTA lodged an objection to the draft Plan. The report presented to Council at its ordinary meeting of the 16 February 2005 detailed the grounds of the objection and provided a summary of the issues. At the time it was reported that Council officers have been meeting and trying to negotiate an outcome with the RTA over the last 8+ months. These discussions have proven unsuccessful. Councils Traffic and transport engineers advised the impact of Area E are relatively small and that the RTA would need to upgrade that section of the Pacific Highway and its interchanges at some time in the future regardless of Area E.

Notably, whilst a State Agency objection remains over the proposed LEP Amendment Council is unable to use its S69 Delegation to forward the Plan to the Minister. It will be necessary for Council to forward the Plan to DIPNR pursuant to S68 and request they forward the Plan to the Minister. It will be DIPNR's responsibility to assess the unresolved objection presented by the RTA.

Recommended Action: No change to the draft LEP as a result of this issue raised by the RTA.

8. Department of Education and Training (DET)

The DET did not make a formal written submission during the public exhibition period. However, on 16 June 2003 the Department indicated the need for a primary school, aligned with the development of Area E. They stated that if new major residential areas proceeded, further government school provision would be required as part of the necessary human services infrastructure to cater for the population, potential a new primary school in Terranora. This position was reflected in the local environmental study prepared to support the draft LEP.

During and after the exhibition period discussions were held with DET to confirm their position and to clarify their requirements. On 27 October 2004 DET advised that their general advice on 16 June 2003 was based on a potential 8000 person population as per Council's Residential Development Strategy 1991. As the LES forecasts a much less lot yield and consequently total population for the study area, as well as having considered other demographic, geographic and logistical factors the Department is of the opinion that future government primary school enrolments likely to be generated from the new

development will be able to be accommodated within the Department's existing local primary school infrastructure.

Recommendation Action: No change to the draft LEP as a result of the issues raised.

PUBLIC SUBMISSIONS

The remaining 124 submissions were received from community members, including residents and businesses. A Submissions Matrix has been prepared providing comments on the grounds of the submissions (refer to Annexure B).

A number of common grounds of objection were identified against which a number of submissions were received. The following is a summary of these grounds together with recommended actions.

9. Lindisfarne Anglican Secondary School

Lindisfarne School outline that the school site is only Zoned in part 5(a) Special Use (School) in the current *Tweed LEP 2000*. The current extent of the 5(a) Zone is also replicated in the proposed LEP Zone map and does not reflect the entire school site holding.

Lindisfarne School submit that the proposed 7(d) zoning on their site extends onto land that has no environmental significance and request that it be changed to 2(c). Further, the proposed 2(c) zoning will place a financial burden on the school as regards rates imposed on the land which would be higher than under a 5(a) Zone.

Comment: The proposed 7(d) Zone over the eastern portion of the Lindisfarne School site covers a section of Camphor laurel 'dominant closed to open forest' that includes at least 11 *Macadamia tetraphylla* species. This species has 'Vulnerable' status under the *Environmental Protection and Biodiversity Conservation Act 1999* and *Threatened Species Conservation Act 1995* (amongst others) and as such this area should be conserved through the retention of the existing 7(d) Environmental Protection (Scenic/Escarpment) Zone. Further the Department of Environment and Conservation has recommended that environmental protections Zones should encompass the full extent of the drainage lines, including any required buffers.

The 2(c) Urban Expansion zoning proposed on the balance of the school site provides flexibility in choice as to whether it used for expansion of the education premises or a non-educational use (eg residential development). Internal Council advice determined that the school property is not rateable. On this basis the school confirmed in correspondence dated 24 May 2004 that they accepted the 2(c) Urban Expansion zoning.

Recommended Action: As a result of issues raised by the Lindisfarne School, it is recommended that:

- On the proposed LEP Zone map, the 7(d) Environmental Protection (Scenic/Escarpment) Zone is extended to include buffers to the ecologically significant habitat in the channel located near the eastern property boundary of Lot 2 on DP 1018747, but not so as to encroach on the proposed extents of the 5(a) Special Use (School) zone. (Refer to Appendix B).

- On the proposed LEP Zone map, the 2(c) Urban Expansion Zone is retained for the balance of the school site (Refer to Appendix B).

10. Agricultural Land Viability

Nineteen (19) submissions were received objecting to the proposal, generally on the following basis:

- Area E contains prime agricultural land and is a highly valuable resource in the Shire. Retain the present agricultural protection zoning
- Guidance from NSW Coastal Council & Department of Agriculture is ignored regarding recognition of the agricultural land value
- Land use conflict will continue between farming practices and urban uses (including existing subdivisions)

Two submissions were received supporting the proposed development with the main grounds raised generally being that:

- Proposed residential development will reduce impacts from existing farming activities
- Fragmented farmland is out-competed by larger enterprises and thus no longer viable

Comment: The LES includes a comprehensive analysis of the viability of the productivity of agricultural land in Area E. The long-term productivity of traditional row cropping in Area E is significantly curtailed because it can only be sustained in very limited areas. The agricultural land is well suited to intensive production of the chosen row crop, typically ladyfinger bananas. However, the economic viability of Area E for such crop production is marginal.

Section 3.9 of the LES identifies that there is a long, sustained trend away from intensive use of agricultural land in Area E, resulting from:

- limited farming returns;
- the potential conflict with encroaching development and development pressures;
- soil and organic matter decline;
- continued risk of soil erosion and environmental impacts;

The Northern Rivers Farmland Protection Project (Lismore Living Centres, 2003) aims to support agriculture by identifying the most important lands for agriculture and protecting such land from the encroachment of urban development. This Project categorises and maps agricultural lands, as either 'State' or 'Regional' importance. Area E is not included as Significant Farmland Protection Areas. Area E's omission from these maps is a reflection of the lands reduced agricultural significance to the regions farming economy.

The *Draft Interim Strategic Plan- Cobaki/ Bilambil Heights/ Terranora 1995* indicates that the market advantage of Area E to main southern markets is diminished from post-harvest storage and transportation systems from Queensland horticultural districts. (p.35). Area E properties are therefore exposed to the effects of low sustainability of production caused by '*severe physical shortcomings of the land*', particularly with regard to the inability to use significant agricultural mechanisation.

Further, the *Draft Interim Strategic Plan* indicates that of the 164.4 hectares of row crop land, '*78.7% comprises land ranked (as) Class 3, 4 and 5 reflecting major physical*

constraints to continuous cultivation'. Production systems in the row crops on the cross slope rock terraces are consequently labour intensive. Further, the *'farms are now closely surrounded by residences, resulting in conflict with farming operations. Broadscale approaches to pest and disease control are precluded by the proximity of houses'* (p.36).

With regard to Area E, the *Draft Interim Strategic Plan* concludes by stating that the approval of the NSW Department of Agriculture (DPI) must be sought if Council supports rezoning applications for this land.

NSW Agriculture (DPI) previously stated in correspondence dated 10 February 1995 to previous consultants dealing with the site, that it will not oppose the rezoning of lands adjoining Mahers Lane providing that it goes to a residential zoning.

The Department of Primary Industries (DPI) submission during the public exhibition period acknowledges and concedes the inevitability of the subject land being developed for urban purposes. Their submission is discussed in item 1.

The change in zoning from 'Agricultural Protection' to 'Urban' is in accordance with Clause 7 of the *North Coast Regional Environmental Plan* and Clause 122 of the *Strategic Plan 1996*. The subject site is also identified as an urban release area within Tweed Futures – Tweed Strategic Plan 2004-2024.

Rezoning the land from a rural use to urban development is supported by the findings of the LES, compliance with past reports and strategies, and acknowledgement received from the State in the form of the Department of Primary Industries.

Recommended Action: No change to the draft LEP as a result of the issues raised

11. Appropriateness of the 1(c) Rural Living zoning

Twelve (12) submissions were received objecting to the proposal on the basis of this issue. The main grounds raised were generally:

- The 1(c) Rural Living zoning is more appropriate to Area E (similar to Terranora Ridge).
- Suggestion of rezoning to 1(c) Rural Living will minimise any habitat changes.
- Area E is an environmentally sensitive area and should be Zoned 1(c) Rural Living
- The 1(c) Rural Living Zone together with extensions to existing roads (eg Parkes Lane, Market Parade) will promote the 'garden suburb' concept

Comment

The *Tweed Residential Development Strategy 1991* historically recognised Area E as a potential urban growth area for residential development (as opposed to recognition in a Rural Residential Strategy). The Residential Development Strategy provides for urban growth in key locations, of which Area E is *'the logical extension of urban development within... the Shire'* (p. 31). As such, allotment densities at a residential or urban scale within the suite of Residential Zones are intimated at by the Strategy to 'accommodate an additional 8,000 persons' (p. 31).

The LES has reevaluated the potential population forecast estimating only approximately 3,500 persons population for Area E. Rezoning the land to 1(c) Rural Living Zone instead of an urban zoning would result in a population considerably less than that envisaged by the Residential Development Strategy in an area targeted for urban growth. The resultant low density population may lead to inefficient and increased costs for infrastructure provision or services delivery. Rural living development would be an impediment to urban growth and the population densities recognised in the *Tweed Residential Development Strategy 1991*.

The issues raised in the *NCUPS 1995* is a State Government Planning policy to manage residential land on the North Coast. With respect to rural living areas, it is notable that the then Department of Planning concluded in the *North Coast Urban Planning Strategy 1995* (NCUPS 1995) that '*current rates and forms of rural residential development are not sustainable in the longer term in respect of environmental, economic and social needs. They use large areas of land solely for the purpose of housing and lead to additional energy use, mainly for transportation. They can sterilise the use of... land resources. They often degrade the environment by... (polluting) waterways and aquifers and reduce flora and fauna habitat areas. They create social needs and demand which cannot be met without significant costs to the wider community*' (p.9). The Strategy proceeds to say that '*in areas near the coastal towns, where urban land is at a premium, rural residential development can significantly impede future urban growth*' (p. 15).

Given the above criteria stipulated by NCUPS above, it is considered that the location of Area E lends itself more toward urban development rather than rural residential development. Further, Area E is a pocket of land situated between Banora Point and Terranora Village. From a planning perspective the development of Area E for urban purposes appears a logical progression/infill of urban development subject to urban design considerations. Developing a pocket of rural residential land between two existing significant urban residential areas would not be considered sound planning.

Submissions indicate zoning the land to 1(c) would minimise the impact on environmental habitats. Irrespective of the use of 1(c) Rural Living or 2(c) Urban Expansion Zone, areas of significant habitat have been identified in the LES, and these environmental values will be safeguarded through Zones 7(a) Environmental Protection (Wetlands and Littoral Rainforest) and 7(d) Environmental Protection (Scenic / Escarpment). As a result of the Department of Environment and Conservation's submission, increased habitat buffer areas and inclusion of other significant habitat areas will further facilitate habitat conservation (this issue is discussed in more detail in Submission 3).

It is acknowledged that the development of larger lots commensurate with the 1(c) Rural Living Zone may result in lower densities that generally facilitate protection of the Area E scenic environment. However, transitional 'zones' comprising larger lots (ie potentially in the order of 1200m²+) can be provided to habitat areas, ridgelines and existing rural living areas in the vicinity of Parkes Lane/ Market Parade, as a buffer. Refer to Item 22 and Appendix C which provides a proposed transitional precinct.

Detailed investigations undertaken during the LES process have found that there is no planning impediment to zoning the land 2(c) Urban Expansion. The analysis has determined the site is suitable to accommodating a 2(c) urban environment.

Utilisation of the 1(c) Zone together with connections of proposed roads into Parkes Lane and Market Parade (for example) raises concerns of ‘rat running’, safety and potentially associated amenity impacts. The draft DCP for Area E acknowledges the potential rat running and restricts the traffic movements through Parkes Land and Market Parade (refer to Attachment C).

In summary a combination of detailed analysis and assessment and compliance with State Government policy, Council’s Residential Development Strategy, Strategic Plan 2000, Tweed Futures - Tweed Strategic Plan 2004-2024, and the LES demonstrate the site can support an urban designation rather than a rural residential zoning.

Recommended Action

No change to the draft LEP as a result of the issues raised.

12. Appropriateness of the 2(c) Urban Expansion zoning

Twelve (12) submissions were received objecting to the proposal on the basis of the above issue. The main grounds raised were generally:

- The 2(c) Urban Expansion zoning would not reflect the urban character of the area, and would not allow Area E to be a logical extension to Banora Point
- The 2(c) Urban Expansion zoning will allow forms of development, including residential development forms (eg cluster houses) that are not foreseen for the area
- The LEP should allow for other suitable development needs, including shops, community infrastructure, schools and recreational areas, as a result of the future residential development

Comment

Within the suite of Residential Zones, the 2(c) Urban Expansion Zone allows for a range of uses generally commensurate with an urban setting. The utilisation of the 2(c) Urban Expansion Zone is consistent with the identification of Area E within the *Tweed Residential Development Strategy 1991* as a major residential release area. The foreseen ultimate development of Area E is aligned with the objectives of the 2(c) Zone including:

- “... mainly residential development focused on multi-use neighbourhood centres” and “optimum utilisation consistent with environmental constraints” (primary objectives)
- allowance of “associated non-residential development which meets the recreation, shopping, commercial, employment and social needs of future residents” (secondary objective)
- “to ensure that sensitive environmental areas... are protected” (secondary objective)
- “to enable planning flexibility to achieve the other objectives of the zone by providing detailed guidelines through development control plans” (secondary objective)

A range of non-residential development (eg commercial, community facilities, open space etc) is required for Area E to support the residential component of the development to create a sustainable liveable community. The proposed 2(c) Urban

Expansion Zone provides flexibility in the planning approach supplemented by a DCP and Masterplan, allowing for this through the completion of the associated supporting planning documents such as a Development Control Plan. Refer to Attachment C for a draft copy of the proposed DCP for Area E. The draft DCP provides a structure plan outlining the proposed land uses on site. These provide for a Residential Precinct (average allotments of 800m²), Residential Transition Precinct (minimum lot size of 1200m²), Village Centre Precinct (provides for retail, commercial activities, community facilities and medium density development), and an Environmental Precinct which reflects the proposed Environmental Protection Zones.

The 2(a) Zone, pursuant to LEP 2000, is more restrictive and does not provide for uses such as retail shops, commercial uses, refreshment premises, markets etc. The 2(a) Zone does not afford the same flexibility as that provided by the 2(c) Zone. The 2(c) Zone also provides for a greater variety of residential development whereas the 2(a) Zone generally restricts development to single detached housing and lower density residential development.

The use of the 2(c) Urban Expansion Zone for the Area E residential component is consistent in approach with the development of other broad hectare residential areas which also include associated non-residential development, but are supported by a DCP.

Area E is affected by SEPP 71 – Coastal Protection. This invariably means that zoning boundaries are not flexible and Council is unable to utilise the flexibility clauses provided for within TLEP 2000 at the development application stage. This clause can prove helpful at the development application stage when as a result of more detailed on-site field surveys and changing circumstances the zoning of the land may not necessarily reflect the topography of the land or the ultimate potential of the land. The ability to employ flexibility clauses of the LEP are considered useful. If the proposed draft LEP identified zones such as 2(a) Low Density Residential Zone, 2(c) Urban Expansion Zone, 3(b) General Business Zone, and 6(a) 6(b) Open Spaces zones, 5(a) Special Uses Zone a degree of certainty would be provided. However, if at a latter date through detailed field survey it is found that there is an anomaly to a zoning boundary or if a subdivision plan doesn't not fully conform with the exact zoning boundaries it would be necessary to amend the LEP and once again go through the entire LEP amendment process, a long process that would be avoided if more flexible provisions were employed. It is proposed to zone urban land 2(c) Urban Expansion and manage the urban uses on site through a proposed DCP for the area. This would provide for a degree of certainty of the land uses to be provided on site, the scale/density of these uses, and where these uses are to be located. It is considered this implementation process would provide for enough certainty and flexibility to ensure appropriate management of the site.

The DCP can be prepared to ensure future development on site will be integrated with the existing surrounding community and responsive to the topography and environmental attributes of the area.

Recommended Action

No change to the draft LEP as a result of the issues raised.

13. Lot Sizes

Thirty one (31) submissions received objected to the draft LEP on the basis of the current proposed lot sizes:

- The LES outlines an average not minimum allotment area of 800m², as outlined in the *Draft Interim Strategic Plan 1996* or *Strategic Plan 2000+*.
- Allotments of 800m² or less would degrade visual amenity and result in greater stormwater run off due to increased hardstand.
- The subsequent Development Control Plan needs to outline minimum allotment areas of 1000m² - 2000m² particularly for steep slopes and visually prominent areas and where adjoining ridgelines or existing Park Living areas.
- Without the certainty of an approved masterplan proposed allotments 800m² or greater will be subdivided in future.

Some submissions supported the draft LEP, advising the proposed average 800m² allotment area is consistent with existing allotment areas in Terranora, including the Terranora Ridgeline.

Comment

Policy and Action Item 122 of the *Strategic Plan 2000+* identified Area E should contain 'a relatively high proportion of large residential lots (ie minimum size 800m²) because of existing development and scenic values'. The Strategic Plan is a broad Shire-wide planning instrument. An LES undertakes a more detailed examination of the subject site. It is not until a local environmental study is undertaken that a more detailed assessment is undertaken and a determination of appropriate allotment sizes is made. In this instance the LES has determined the site is capable of sustaining a variety of different sized allotments averaging 800m². This provides for lots less than and greater than 800m² depending on the topography of the area. Further, Strategic Plan 2000+ also provided for the definition of areas of potential dual occupancy and medium density development. The draft DCP in Attachment C provides for the proposed Village Centre Precinct.

It is recognised that allotment sizes have to be sympathetic to the topography of Area E and as such, larger allotments are appropriate as a transition to existing rural residential allotments; adjoining ridgelines; visually prominent areas; and potentially environmentally significant areas. A transition precinct is illustrated in the draft DCP (Attachment C) and provides for minimum size allotments of 1200m². Council has previously adopted a minimum allotment size of 1,200m² in similar circumstances in the Black Rocks urban release area.

The transitional allotment size to external 1(c) Rural Living zone and rural residential development is of importance if Area E is to achieve seamless visual integration with surrounding development. The residential transition precinct achieves this through the provision of large allotments and through the requirement of vegetated buffers.

Recommended Action: No change to the draft LEP as a result of the issues raised.

14. Planning Framework

Thirty-two (32) submissions were received regarding the statutory process for the LEP amendment and development of Area E. Thirty-one submissions objected to the proposal on the basis that:

- It was not supported by a Master Plan to provide certainty of the final development form and outcomes. In particular, aspects such as allotment size, location of open space, and transport planning considerations should be defined and identified in the Master Plan.

One submission was received supporting the current statutory process.

Comment

From the grounds of the submissions there appears to be a general misunderstanding of the statutory process for the development of Area E, including the role and timing of a Master Plan.

- The term 'Master Plan' is defined in Section 17, Part 5 of *SEPP 71 – Coastal Protection* as '*a document consisting of written information, maps and diagrams that outlines proposals for development of the land to which the master plan applies*'. A Master Plan is usually required to be prepared by the developer under SEPP 71 at the development application stage in accordance with the site provisions in the LEP amendment and Development Control Plan Guidelines. It will provide certainty of the final development form.

The LES and proposed LEP amendment have been prepared in accordance with the statutory process outlined under Division 4, Part 3 of the *Environmental Planning and Assessment Act 1979* respectively. The Consultant's Brief includes preparation of a DCP to support the proposed LEP Amendment. The LEP amendment process for Area E has not included the preparation of a Master Plan because this has been undertaken at the development application stage and has been the responsibility of the developer. The developer will be required to prepare a Master Plan in accordance with Part 5 'Master Plans' of *SEPP 71 – Coastal Protection*. The Master Plan will provide final certainty of development form. It is to be prepared in accordance with the criteria identified in Section 20 of Part 5 and the broad concepts in the DCP.

Verbal advice from DIPNR has confirmed the DCP could form a statutory component of the LEP amendment, if it is gazetted (and dated) at the same time as the proposed LEP amendment. In this way it would form the basis for regulating the final subdivision pattern in the Master Plan. Council has not previously required the preparation of a DCP to accompany amendments to the *Tweed Local Environmental Plan 2000*. Similarly, the preparation of a DCP is not a statutory or State Agency requirement at this stage of the LEP amendment process.

Despite this, implementation of a DCP is considered appropriate, and a draft DCP has been prepared for the site to manage future developments of the site. Refer to Item 22 for further discussion of this issue.

In consideration of whether the preparation of a Master Plan is required at this point in the LEP amendment process, it is significant to note that DIPNR has not identified a

requirement for same or recommended a departure from the statutory process outlined in the *Environmental Planning and Assessment Act 1979*. On this basis, there does not appear to be a significant reason to depart past Council practice and from the statutory process for the preparation of the LEP amendment (and associated documents) set down in the Act.

It is considered that the traditional approach adopted by Council in the past of effecting the LEP Amendment, followed by the management of the land through a DCP and assessing development through a Master Plan at the DA stage is adequate and appropriate for the development of this land. The draft DCP is nearing completion, and a S94 Contribution Plan for the site will be finalised providing Council with adequate statutory planning controls to manage development of Area E. The comprehensive planning framework of an LEP supported by a DCP is considered resilient enough to appropriately manage Area E.

Recommended Action

No change to the draft LEP as a result of the issues raised.

15. Compensation

Two submissions were received objecting to the proposal raising issues of compensation. The main grounds raised were generally that a reduction in property values would occur as a result of inclusion of the 7(d) Environmental Protection (Wetlands and Littoral Rainforests) Zone on their property.

Comment

Section 24 of the *Environmental Planning and Assessment Act 1979* allows the draft LEP to make provision for protecting the environment; protecting or preserving trees or vegetation; and protecting and conserving native animals and plants (including threatened species, populations and ecological communities, and their habitats). Zoning land for Environmental Protection purposes does not trigger compensatory provisions in accordance with the Act.

The *Environmental Planning and Assessment Act 1979* only includes compensatory provisions under Section 27 for open space or a public school (as appropriate to Area E), but not for environmental protection. Where the future Structure Plan or Master Plan supporting the LEP amendment reserves land for use exclusively as open space or a public school, Council may acquire that subject land under Section 27 of the *Environmental Planning and Assessment Act 1979*.

Further, owners of allotments currently identified as 1(b1) Agricultural Protection Zone in the LEP have the right to develop one dwelling on their property. Irrespective of the inclusion of the property in the 7(d) Environmental Protection Zone, the land use rights are protected and the entitlement to develop a dwelling on their property still remains.

Recommended Action

No change to the draft LEP as a result of the issues raised.

16. Consultation in preparation of the LES and LEP

Twelve (12) submissions were received objecting to the proposal with regard to the lack of consultation in the preparation of the LES and LEP. The main grounds raised were:

- There was an inadequate, inappropriate or lack of community consultation in the preparation of the LES/ LEP
- No community consultation was undertaken prior to the LES and hence further consultation should be undertaken
- Consultation is requested/ recommended in the preparation of any Master Plan and Development Control Plan for the development of Area E.

Comment

The draft LEP and LES were exhibited between 17 March and 7 May 2004 for 52 days, clearly exceeding the minimum statutory requirement of 28 days.

A community information forum was also held on 29 April 2004 at the Terranora Community Hall. This forum presented a further opportunity for the community and interested persons to be updated on the LES and Draft LEP and to talk to technical staff in a small group setting.

There were no additional requirements for community consultation notified to Council by the Director-General, DIPNR.

Council has complied with, and exceeded the minimum consultation requirements under the *Environmental Planning and Assessment Act 1979* and associated Regulation for the preparation of a LES and draft LEP for Area E.

Recommended Action

No change is recommended to the LEP as a result of this issue.

17. Transmission Lines

Twenty four (24) submissions were received objecting to the proposal with regard to the above issue. The main grounds raised were that the 66kV electricity lines should not be erected 'overhead' but instead that all electricity lines should be placed underground for the purposes of visual amenity.

There were no submissions made supporting the current proposal of above-ground power reticulation.

Comment

The proposed mapping for the LEP Amendment includes both the existing registered easement and the corridor included in the current *Tweed LEP 2000* mapping. It is noted from correspondence dated 16 June 2003 that Country Energy have a requirement for an electricity transmission corridor. This correspondence indicates that the potential to

reduce operational '*clearances exists* (to the electricity line) *should the developers fund an underground proposal*'.

Verbal confirmation from Country Energy was obtained on 18 May 2004 that 'undergrounding' the electricity infrastructure **may** be possible, subject to:

- The mutual agreement and satisfaction of the provider, Council, community and potentially the developer (particularly funding)
- The undertaking of further environmental studies by a consultant commissioned by Country Energy
- A decision not in-line with the existing Country Energy policy stance (overhead powerlines). A 66kV line is not for household supply but for greater network reticulation.

The requirement of underground power will be included and implemented through the DCP.

Recommended Action

No change is recommended to the LEP as a result of this issue.

18. Visual Quality

Twenty six (26) submissions were received objecting to the proposal, generally on the basis that the urban development of Area E, the visual amenity of the area would be reduced or lost by:

- The effect of impervious surfaces such as rooves, roads, buildings and other infrastructure
- The need for retaining walls to afford development due to the slope of the land
- The subdivision of allotments into areas cited as '450m²-700m²', '400m² - 600m²' or 'blocks less than 800m²'
- Non-compliance with the Integrated Local Area Plan which outlined that only 'pockets' of houses should be developed

Two submissions were received supporting the proposed development with the main grounds generally being that the proposed development would:

- Retain the wetlands and rehabilitate habitat areas, thus having the affect of preserving or improving aesthetic values.
- Provide scope for coordinated development taking advantage of quality vistas for public areas and residential development.

Comment

The visual impacts resulting from development would include loss of open/ rural character through the transformation of the site from a rural to a residential area, together with associated cut and fill.

The visual impact of cut and fill, and associated retaining walls, has been discussed in Item 19 of this report. The visual impact from such structures, if not adequately regulated or controlled, would have the potential to be significant. The need for additional guidelines or provisions in the Development Control Plan regulating design parameters for retaining walls and cut and fill is considered important.

The open/rural characteristics of Terranora and Area E have been eroded due to urbanisation on the western and eastern boundaries, and ribbon residential development along Terranora Road. It is considered the impact of urban development on landscape values will be lessened by the preservation and rehabilitation of wetlands and other vegetation fringing Terranora Broadwater, together with the retention of vegetation along waterways and steeper slopes. This will break up the urban form of development thus preserving some characteristics of the current views to the site. To soften the impact of the built environment it is also proposed to provide vegetated buffers to ridgelines and adjoining rural residential properties. Provision of larger allotments (greater than 1200m²) along ridgelines will also provide opportunity for vegetation on site and greater spatial distribution between built structures. This is to be implemented through specific provisions within the DCP.

The Draft Interim Strategic Plan recognised that diversity of landscape elements is a key to the area's visual quality. This includes both vegetation and land use diversity and the need to ensure that no one particular land use dominates in any one or all areas. It is acknowledged that the existing rural landscape will be lost. The draft DCP (Attachment C) provides a series of development controls including rehabilitation of environmentally significant areas, open space areas, building design guidelines, cut and fill development controls, provision of larger lots, and the provision of vegetated buffers to help soften the impact of a built environment.

Preservation and rehabilitation of environmentally significant areas is an integral element to the development of Area E. To ensure this is effected, relevant provisions have been incorporated in the draft LEP, which are to be supported by a DCP. A S94 Plan is to be prepared for the site which will address the issue of financing the cost of the required EIS and rehabilitation plans and the necessary works, as well as the transfer of these lands to public ownership.

The potential impact of allotment size on visual amenity is discussed in Item 13.

Recommended Action

No change is recommended to the LEP as a result of this issue.

19. Cut and Fill

Twenty three (23) submissions were received objecting to the proposal with regard to the potential impact from resultant cut and fill of the site to facilitate development. The main grounds raised were that:

- Cut and fill should be minimised so that there is consistency between the existing rural environment and future urban development and to minimise the extent of retaining walls required (and their associated visual impacts)
- Limit the amount of cut and fill required through the use of appropriate allotment sizes and movement networks, commensurate with the topography.

Comment

The Area E topography will require some cutting and filling to afford development. However, this must be sympathetic to the existing topography to minimise impacts on visual amenity and the potential loss in character through transition from a rural to urban environment.

Council's requirements for cut and fill are regulated by Tweed *DCP No 47 Cut and Fill on Residential Land* and DCP 16 Subdivision Manual. Additional requirements, guidelines or provisions for maximum vertical retaining walls heights will be placed in the Area E DCP. (Refer to Attachment C). Also the provision of internal access roads will be planned 'along' contours. Refer to the draft DCP in Attachment C which provides cut and fill guidelines specific to Area E.

DCP 16 Subdivision Manual contains *Development Construction Specification C211 Control of Erosion and Sedimentation* which applies to cut and fill, including measures to prevent sedimentation, and erosion and sediment control.

Recommended Action

Cut and fill design guidelines are provided within the draft Development Control Plan for Area E (Attachment C). As this issue can be addressed by the DCP no change is considered necessary for the draft LEP.

20. Stormwater Discharge and Water Quality

Nineteen submissions were received regarding the potential stormwater and water quality impacts arising from the development of Area E. Seventeen submissions objected to the proposal on the basis that:

- Stormwater runoff has the potential to increase the siltation of Trutes Bay during heavy rainfall events
- Stormwater runoff has the potential to adversely impact on waterways, including the SEPP 14 wetlands, that are already under threat

Two submissions were received supporting the proposed development of Area E, on the basis that formalisation of stormwater management infrastructure would reduce the current water quality and siltation impacts to Trutes Bay (particularly from agricultural activities).

Comment

The stormwater and water quality analysis was undertaken with a high level of rigour in consultation with the DEC (former EPA). It included a greater degree of detail than is otherwise required by the EPA to facilitate 'rezonings'. It is noted that the high level of analysis exhibited for this project will be adopted by the EPA for future LEP rezoning amendments. Verbal discussions with DEC representatives praised Parsons Brinckerhoff's and Council's efforts in the analysis and assessment of the stormwater and water quality issues for Area E. They complimented the redundancy concept outlined in the LES. It is proposed to implement this stormwater management technique through the DCP.

The sedimentation of Trutes Bay is linked to a much larger catchment of which Area E is only a part. A review of the entire catchment and potential sediment sources would be required to identify what treatment measures are required to limit sediment loads entering Trutes Bay. The Area E development will potentially increase the volume of stormwater and stormwater pollutants, including Total Suspended Solids (TSS), entering Trutes Bay from the Area E catchment. Water quality modelling indicates that a fully urban developed Area E would increase annual TSS loads by around 80% from existing levels. The modelling also indicates that if suitable stormwater management treatment measures such as grassed swales and wetlands are used to treat stormwater runoff, that the TSS loads will be less than current levels. Trutes Bay will still receive relatively high sediment loads from other catchments, but the input from a developed Area E, with the right stormwater treatment measures, will be reduced by around 60% from current levels.

The earthworks associated with development (cutting and filling) usually causes the highest concentration of Total Suspended Solids (TSS) in urban stormwater runoff. The impact of development earthworks can be minimised by ensuring that best management practices are adopted and maintained during the construction period.

An Erosion and Sediment Control Plan should be required to identify what additional treatment measures are required to limit scour and erosion during the construction period. Erosion and sediment control measures during construction should also be provided by the developer in accordance with Council's *Code of Practice for Soil and Water Management on Construction Works* (Annexure A, Development Design Specification D7 - Stormwater Quality).

As noted previously within this report the DEC submission supports the preferred treatment Strategy Mitigation Option 4 (treatment train approach) in the LES which recommends the use of rainwater tanks for laundry, hot water, toilets and external uses grassed swales, amongst others. DEC also states that these stormwater management strategies should be a mandatory component of the Stormwater Management Plan to be developed and should be detailed in the draft LEP.

Recommended Action

As a result of issues raised by the DEC, it is recommended that a drafting change to the existing 53A(4) of the draft LEP amendment be made to include a requirement for:

- The stormwater management strategy identified as Stormwater Mitigation 4 Option (treatment train approach) in the LES to be mandatory (which by its nature includes the concept of 'redundancy'). Refer to Appendix B

21. Water and Sewer Infrastructure

Twenty-seven submissions were received regarding the provision of water and sewerage infrastructure for the development of Area E. Sixteen submissions objected to the proposal on the basis that:

- Current sewer and water infrastructure servicing Area E is not adequate to cater for large scale development

- An alternate site should be identified for the 3ML water reservoir required to service the site

Eleven submissions were received supporting the proposed development on the basis that:

- The development will improve infrastructure in the area and provide greater development opportunities
- The costs of implementing infrastructure upgrades could be borne by the residential expansion

Comment

The existing water and sewerage infrastructure for Area E is inadequate to cater for the proposed population. Previous Council studies and investigations have identified that a new 3ML water supply reservoir is required to store water and provide sufficient water pressure for supply to the residents of Area E. Attachment C provides a draft DCP for the area and identifies an alternate location for the reservoir.

The existing sewerage rising mains and pump stations do not have sufficient capacity to cater for the expected sewage flows from the fully developed Area E. A new rising main and three pump stations (for each sub-catchment) will be required to direct sewage to the Banora Point sewerage treatment plant.

The existing Banora Point sewage treatment plant has capacity for the Area E population, but it would need upgrading to support all proposed developments within its catchment. Council is currently reviewing what options they have to upgrade the treatment capacity and identify what effluent discharge and reuse options are available to meet current environmental discharge standards.

Recommended Action: No change is recommended to the LEP as a result of this issue.

22. Development Control Plan

The DCP is intended to be a statutory planning document that supports the aims and objectives of the draft LEP and is implemented to manage development of the area through design/development guidelines. The LES and draft LEP is generally a broad assessment of the capabilities of the site to support urban development. The LES identifies issues requiring detailed controls and considerations to be applied through a DCP and consequently assessment of development. The DCP is intended to provide detailed development controls specific to the site to ensure development is consistent with the character of the area and responsive to the topography and environmental qualities of the site and is integrated with surrounding land uses.

One of the issues raised by the community during the course of public exhibition has been certainty. The LEP is a planning instrument that has greater weighting than the DCP. It is considered that there is greater likelihood to vary from development guidelines stipulated within a DCP rather than those identified in an LEP. Hence, there is public perception that the development parameters identified in the DCP may not necessarily be adhered to resulting in development that may not necessarily have been originally envisaged. One manner in which to provide greater certainty is to incorporate the draft

DCP as part of the proposed LEP in much the same manner that DCP 40 - Exempt and Complying Development is applied.

This option would provide a greater degree of certainty than a stand alone DCP. However, it would also mean that the DCP would be very inflexible. Any time the DCP would need to be amended Council would be required to follow the entire LEP amendment process, regardless of how minor the DCP amendment is. These timing and resource issues are currently being experienced with DCP 40 amendments.

Aside from DCP40, no other DCP's are implemented in this manner. Similarly other urban release areas such as Cobaki Lakes, Banora Point, Seabreeze Estate, Black Rocks Estate, Casuarina, Salt, Koala Beach were undertaken without a DCP or with a DCP implemented in the traditional manner as a stand alone document.

As referenced through parts of this report a preliminary draft DCP has been provided for Area E. A copy of this document is provided as Attachment C. Please note that this document is still a draft document and subject to further amendments before being formally presented to Council and placed on exhibition for public comment. The purpose of providing this draft DCP at this stage is to support the draft LEP. The draft DCP has been referenced through this report to demonstrate how some of the issues raised during the public exhibition process can be addressed by the DCP rather than through the proposed LEP document. The draft DCP addresses issues such as:

- Broad land use allocations (including general locations of the commercial facilities and community facilities, note that details as to the constituent tenancies would be subject to commercial demand and further investigation)
- Design Philosophy and Development Principles (including 'sense of place' and 'character' and overriding lot layout principles)
- Land Use and Plan Components (including densities and intents for the land uses identified in the Structure Plan, also includes Guidelines for large allotment transition areas)
- Utility Requirements (including water and sewerage headworks requirements water requirements for fire fighting, and design Guidelines for the provision of underground electricity transmission and distribution infrastructure)
- Commercial Requirements (identification of role and intent of the proposed commercial facilities in the overall hierarchy)
- Housing Requirements (including building heights for ridgelines, building forms, sympathetic colours, housing diversity, and additional cut and fill requirements supporting DCP No. 47 Cut and Fill on Residential Land)
- Community Facilities (identification of final facility requirements and threshold targets for provision, together with any Section 94 Contribution requirements thereof)
- Stormwater Management (further guidance on Stormwater Management plan requirements)
- Major Open Space System (including Guidelines for Structured and Casual Open Space and any unique Contribution requirements for Area E identified thereof)
- Environmental Protection (includes Guidelines and measures for the protection of significant environmental areas, together with bush regeneration plan requirements)
- Indicative residential densities (based on desired allotment sizes and transitional areas to ridgelines, existing rural living allotments and significant environmental areas)

- Bushfire management controls
- Indicative locations of open space and environmental areas for conservation
- High-level movement corridors (including the indicative route of the Mahers Lane extension and its intersection with Fraser Drive) but not detailed road layouts
- Bicycle and pedestrian networks, together with likely stops ('end of destination') for public transport
- Indicative locations for community facilities
- Indicative infrastructure locations for stormwater management and water reticulation (including the 3MI water reservoir and rehabilitated/artificial wetlands for stormwater management purposes)

If Council were to implement the DCP in conjunction with the LEP, in the same manner as DCP 40, it would invariably mean the LEP process would need to be placed on hold pending the finalisation of the DCP, exhibition of the DCP and adoption by Council. This would delay the process for approximately 2-3 months. It is not considered necessary that the DCP needs to be rigid and restrictive by tying it to the LEP in the same manner as DCP 40. Development Control Plans are generally meant to be documents with development guidelines and controls that enable developments to be assessed on its merits. If a DCP is applied correctly by Council its development controls are effective and resilient when assessing development applications. Tying the DCP to the LEP, although providing certainty, may prove too restrictive and may lead to an inefficient use of time and resources if the document needs to be amended.

The statutory planning framework when implemented accordingly has generally proven resilient and rigorous. It is considered that if Council's LEP provisions are implemented appropriately in conjunction with the DCP then development of Area E can be managed appropriately and accordingly.

Recommended Action: No change to draft LEP required.

23. Traffic

There were approximately 57 submissions received concerning traffic issues. The main grounds raised included:

- Development will increase traffic on Terranora Road and streets around Banora Point.
- Development will further exacerbate existing traffic issues in the area (Terranora Road and Banora Point) creating safety concerns and traffic congestion.
- Objection to the path of the proposed Mahers Lane Extension.
- Provision of public transport (bus routes).
- Increase in traffic noise.
- Traffic impacts to existing 1(c) enclave (Parkes Lane).
- Proposed extension of Mahers Lane will reduce traffic impacts on Terranora Road.
- Development of key infrastructure needs to be in place prior to the development of Area E.

Many of the submissions received related to the potential impact of the additional traffic generated by Area E on the current traffic network and the ability of the traffic infrastructure to cope with the additional traffic volumes. The LES stipulates that certain

external traffic infrastructure improvements need to be undertaken prior to the development of Area E. These include:

- Kirkwood Road extension;
- Upgrading of Fraser Drive;
- Upgrading of Leisure Drive;
- Upgrading of parts of Terranora Road
(Refer to Attachment B for a more detailed description of these future proposed transport improvements)

The LES concludes that the traffic impacts of the potential development of Area E are likely to be accommodated within the future road network proposed for the locality.

At its Ordinary Meeting of 2 March 2004 Council adopted the work undertaken by Vietch Lister Consulting (VLC) for the Banora Point and Tweed Road Development Strategy. As part of this Strategy VLC were requested to specifically investigate the impact of potential traffic generation on the local traffic network and the Pacific Highway for Area E. VLC found that Area E will produce increased traffic on the local road network, and to a lesser extent, on the Pacific Highway. "Area E" is expected to have some reasonably significant impacts on the road network in South Tweed Heads/Banora Point. However, the more significant impacts are on Shire roads which would be capable of absorbing them, or for which improvements are contemplated. VLC's only concern, in respect of the local area network, is the potential 'rat-run' through Amaroo Drive-Darlington Drive-Banora Hills Drive. While it appears that adequate capacity exists for the demands forecast on this route, VLC suggest that more detailed planning of Area E should aim to encourage greater use of Terranora Road.

The engineering analysis (VLC and PB) for the traffic issues pertaining to Area E concludes that the additional traffic generated by Area E can be readily supported by the future local traffic network. This invariably suggests that local roads will be operating at various capacities and standards considered acceptable from a traffic engineering perspective.

Although the traffic engineering standards are met, this does not necessarily mean that the social/community concerns expressed by the submissions are addressed. The submissions received relate mainly to the loss in amenity as a result of the extra traffic generated by Area E traffic. It is suggested, by the submissions received, that traffic congestion, noise and safety concerns are currently being experienced on the road network and Area E will further exacerbate the current problems being experienced.

Assessing the issue of amenity is invariably a difficult task because it is a subjective issue. The engineering standards are uniform nationally, and hence the road standards/capacities applied to Banora Point/Terranora are the same as that applied to other urbanised localities. Hence, what is considered acceptable to one urban community may not necessarily be acceptable to another community not used to "urban" traffic movement and flows. This appears to be the situation facing residents of Banora Point and Terranora, whose objection is based on the potential impact of Area E and the corresponding decline in the traffic amenity of the locality.

It can be argued that future road upgrades as detailed previously will partially help to address these concerns, however the current amenity of the local area will be affected.

The loss in traffic amenity is inevitably a product of urban growth. Increase in residents leads to an increase in traffic which will impact on existing local traffic patterns. As with other factors such as infrastructure, landscape character and amenity considerations, existing situations will always change and it is impossible to retain the status quo. The most important consideration is effectively managing these changes.

Future road upgrades, currently being investigated by the RTA of the Pacific Highway, will also contribute significantly to addressing local traffic movements and flows.

VLC found the impacts of Area E on the strategic road network will be small, relative to the future base volumes and conditions. Any improvements which address the forecast base conditions should be capable of handling the additional impacts of Area E.

VLC's findings support those of the LES prepared by Parsons Brinckerhoff.

Certain submissions raised the issue of potential rat runs through local streets. It is important to note that Attachment C provide a draft DCP for Area E. This draft document stipulates three (3) alternate routes for the extension of Mahers Lane with the preferred option running through part of the wetland and connecting with Fraser Drive north of Amaroo Drive. If this proposed route is implemented the potential issue of "rat-running" through Amaroo Drive would be avoided/decreased. This preferred option should also address the concerns of those people affected by the route illustrated in the LES during the public exhibition period. The potential alignment of the Mahers Lane extension does not need to be illustrated through the draft Plan and is addressed through the draft DCP. This issue can be deleted from the exhibited draft Plan (map).

Other issues raised during the exhibition period related to the potential impacts to the existing 1((c) Zone and Parkes Lane. Attachment C, draft DCP, provides for controls that restricts the movement of vehicles from Area E through to Parkes Lane. This provision should maintain the traffic concerns and amenity of residents within Parkes Lane.

The issue of public transport has also been addressed through the draft DCP provided in Attachment C.

Recommended Action: Amend the exhibited draft Plan by deleting the proposed alignment of the Mahers Lane extension in accordance with the map illustrated in Appendix 3.

24. Section 94 Contribution Plan

As part of the project Parsons Brinckerhoff have also been requested to prepare a S94 Contributions Plan for the site. This process has commenced, but has not yet progressed to a draft stage. The S94 Plan is envisaged to include:

- Preparation of an EIS and rehabilitation plan for the SEPP 14 Wetland and environmentally significant areas;
- Dedication of these environmentally significant lands to Council;
- Traffic issues - extension of Mahers Lane and intersection to Terranora Road and Fraser Drive;
- Cycleways;
- Open Space;

- Community Facilities;
- Stormwater Infrastructure.

This report has identified a number of infrastructure requirements for Area E. The proposed S94 Plan is intended to fund the provision of this infrastructure.

Recommended Action: No change to the draft Plan as a result of this issue.

25. Transfer of Land

As stipulated within this report and the draft Plan it is proposed to rehabilitate the SEPP 14 Wetland designated over Lot 22, DP 755740, Fraser Drive, Terranora. It is also proposed to have this land transferred into public ownership (Council). Discussions with landowners have demonstrated their agreement to enable this to occur. The draft DCP includes provisions requiring this transfer of land to occur, however it is considered that a legal Deed of Agreement be entered into between Council and the landowner to ensure this occurs. It is also considered that such a Deed of Agreement be entered into prior to the draft Plan being gazetted by the Minister.

Recommended Action: No change to the draft LEP required as a result of this issue. However, it is necessary that a legal Deed of Agreement be entered into that will realise the transfer of Lot 22, DP 755740 into Council's ownership. This Deed of Agreement is to be entered into prior to gazettal of the LEP.

CONCLUSION

A number of constraints and issues were identified from the exhibition of the LES and the draft LEP. These constraints and issues can be resolved through the implementation of current and proposed planning provisions, design criteria, management measures, or amendments to the exhibited draft Plan, the future accompanying Development Control Plan and through the assessment of a masterplan (SEPP 71) and a development application.

In conclusion, no submissions received prevent the rezoning of the subject land in the form stipulated in Appendix B. Significant issues raised by the submissions can be comprehensively addressed through a DCP.

It is recommended the draft Plan be amended from that which was exhibited. The recommended changes are discussed within this Report and are included in the amended draft Plan in Annexure B. In principle they involve:

- Amendments to the zoning map of the exhibited draft Plan as a result of increasing the area of the 7(a) and 7(d) Environmental Protection Zones in response to the DEC's concerns. This reduces the extent of the proposed 2(c) Urban Expansion Zone.

The statutory options available to Council with regard to the further consideration of the LES and draft LEP include:

- A. Adopt the draft LEP as exhibited (Appendix A), or
- B. Adopt the draft LEP as amended in accordance with the recommendations in this Report (Appendix B), or

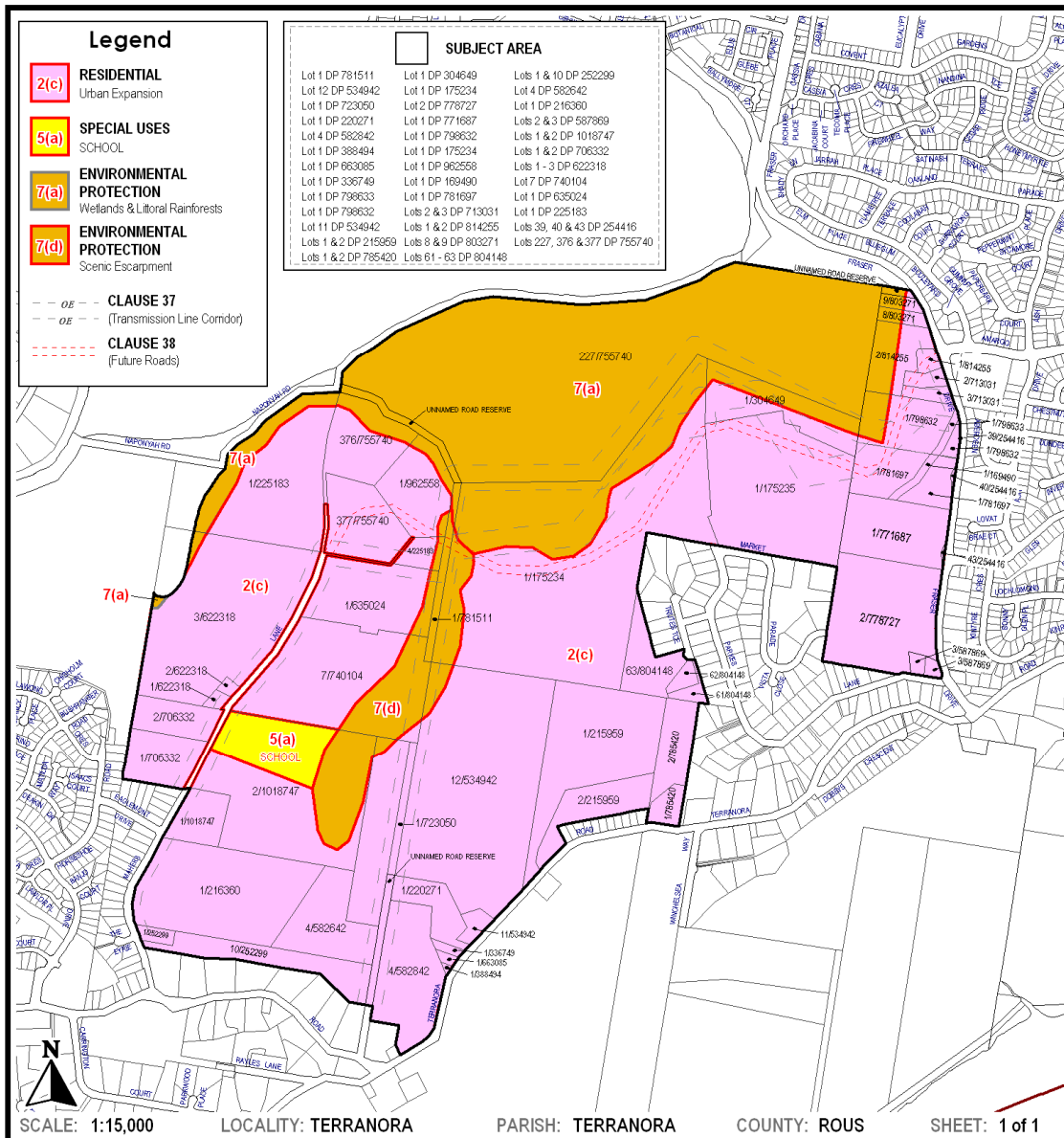
- C. Place the statutory process in abeyance until such time as a Development Control Plan has been prepared and finalised, to support the draft LEP, or
- D. Refuse to adopt the draft LEP, either as exhibited or as amended in accordance with the recommendations in this Report.

RECOMMENDATION

It is recommended that Council resolve to adopt Option B above and amend the draft Plan as per Appendix B. The draft Plan should then be forwarded to the Department requesting it be forwarded on to the Minister for Department of Infrastructure, Planning and Natural Resources so that the Plan can be made.

This action would be followed by the preparation and finalisation of a statutory Development Control Plan (Attachment C).

APPENDIX A



ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979		
TWEED		
DRAFT LOCAL ENVIRONMENTAL PLAN 2000 AMENDMENT No. 10		
DRAWN BY: J. Batchelor SUPERVISING DRAFTER: PLANNING OFFICER: Eber Butron COUNCIL FILE No. GTI/LEP/2000/10 DEPT. FILE No.: G94/00396 GOVT. GAZETTE OF:	DATE: 16/03/2004 STATEMENT OF RELATIONSHIP WITH OTHER PLANS AMENDS: TWEED LOCAL ENVIRONMENTAL PLAN 2000	CERTIFIED IN ACCORDANCE WITH THE ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979, AND REGULATIONS
	GENERAL MANAGER	DATE: 16/03/2004

draft

Tweed Local Environmental Plan 2000 (Amendment No 10)

under the

Environmental Planning and Assessment Act 1979

I, the Minister for Urban Affairs and Planning, make the following local environmental plan under the *Environmental Planning and Assessment Act 1979* (.....)

Minister for Urban Affairs and Planning

draft

Tweed Local Environmental Plan 2000 (Amendment No 10)

1. Name of plan

This plan is the *Tweed Local Environmental Plan 2000 (Amendment No 10)*.

2. Aims, objectives etc

This plan aims to:

- Zone certain land at Terranora Urban Release Area (Area E) 2(c) Urban Expansion, 7(d) Environmental Protection (Scenic/Escarpment), 7(a) Environmental Protection (Wetland and Littoral Rainforest), and 5(a) School, to reflect the land's capability, suitability and characteristics.
- Amend provisions of Tweed Local Environmental Plan 2000 as they relate to the subject land to reflect changes and standards for urban design and environmental impact;
- Provide for efficient and consolidated urban growth;
- Protect local environmental and landscape values of wetlands, remnant vegetation and Terranora Broadwater; and
- Protect urban development from environmental hazards.

3. Land to which plan applies

This plan applies to land known as Terranora Urban Release Area (Area E) as shown edged heavy black on the map marked Tweed Local Environmental Plan 2000 (Amendment No. 10) deposited in the office of Tweed Shire Council.

4. Amendment of Tweed Local Environmental Plan 2000

Tweed Local Environmental Plan 2000 is amended by

- a) By inserting in appropriate order, in Part 2 of Schedule 6, the words: Tweed Local Environmental Plan 2000 (Amendment No. 10);
- b) By inserting after clause 39(2) the following sub-clauses:-
 - (3) When preparing a development application for use of the land to which this plan applies, the applicant shall clearly demonstrate:-
 - (i) the likely contaminants within the soil, surface water and groundwater as a result of previous land uses;
 - (ii) that an effective testing regime has been implemented to identify hotspots of contamination pursuant to current EPA guidelines including a consideration of the hydrogeology of the land;
 - (iii) that appropriate thresholds and criteria have been used in the assessment of potential contamination;
 - (iv) that the land does not pose a significant threat to human health or the environment;

- (v) that if contamination has been identified that an appropriate remedial action plan can be developed to demonstrate how identified risks can be reduced to acceptable levels and that remediation is practical;
- (vi) that an adequate monitoring program can be implemented.

c) By inserting after clause 53 the following clause:-

53A – Specific Provisions for Terranora Urban Release Area (Area E)

- (1) This clause applies to land known as Terranora Urban Release Area (Area E) as shown edged heavy black and coloured on the map marked "Tweed Local Environmental Plan 2000 (Amendment No.10)";
- (2) Preliminary Planning
 - (a) Objectives
 - To ensure a development control plan, developer contribution plan and master plan has been developed for the entire site to avoid ad hoc development and ensure equitable cost sharing in the provision of public amenities and services
 - To ensure that issues relating to contaminated land are dealt with to a sufficient level to meet the requirements of State Environmental Planning Policy No 55—Remediation of Land
 - (b) Pursuant to the Environmental Planning and Assessment Amendment (Preliminary Planning) Regulation 2000, Council shall not consent to development on land to which this clause applies unless:
 - (i) a development control plan has been approved for the land, and
 - (ii) a contributions plan has been approved for the land, and
 - (iii) the development application makes comprehensive proposals for development of the land or consent has already been granted to such a development application, and
 - (iv) there is a master plan for the land, and the consent authority has taken the master plan into consideration, and
 - (v) that the extent of any contaminated land is known to an extent necessary to allow the location of sensitive land uses at both the development control plan and master plan preparation stage.
- (3) Wetlands Rehabilitation and Management
 - (a) Objective
 - To restore and protect freshwater wetland values and minimise breeding habitat for salt water mosquitoes and biting midges;
 - (b) The Council shall not consent to development on land to which this Clause applies unless the applicant demonstrates to the satisfaction of Council that the development complies with a Wetlands Rehabilitation and Management Plan which has been prepared for wetlands within the area. Such a Wetlands Rehabilitation and

Management Plan shall identify the way in which the wetland is to be restored and managed to restore freshwater wetland values and minimise breeding habitat for saltwater mosquitoes and biting midges. The plan will also include details of costs and works required to undertake this rehabilitation.

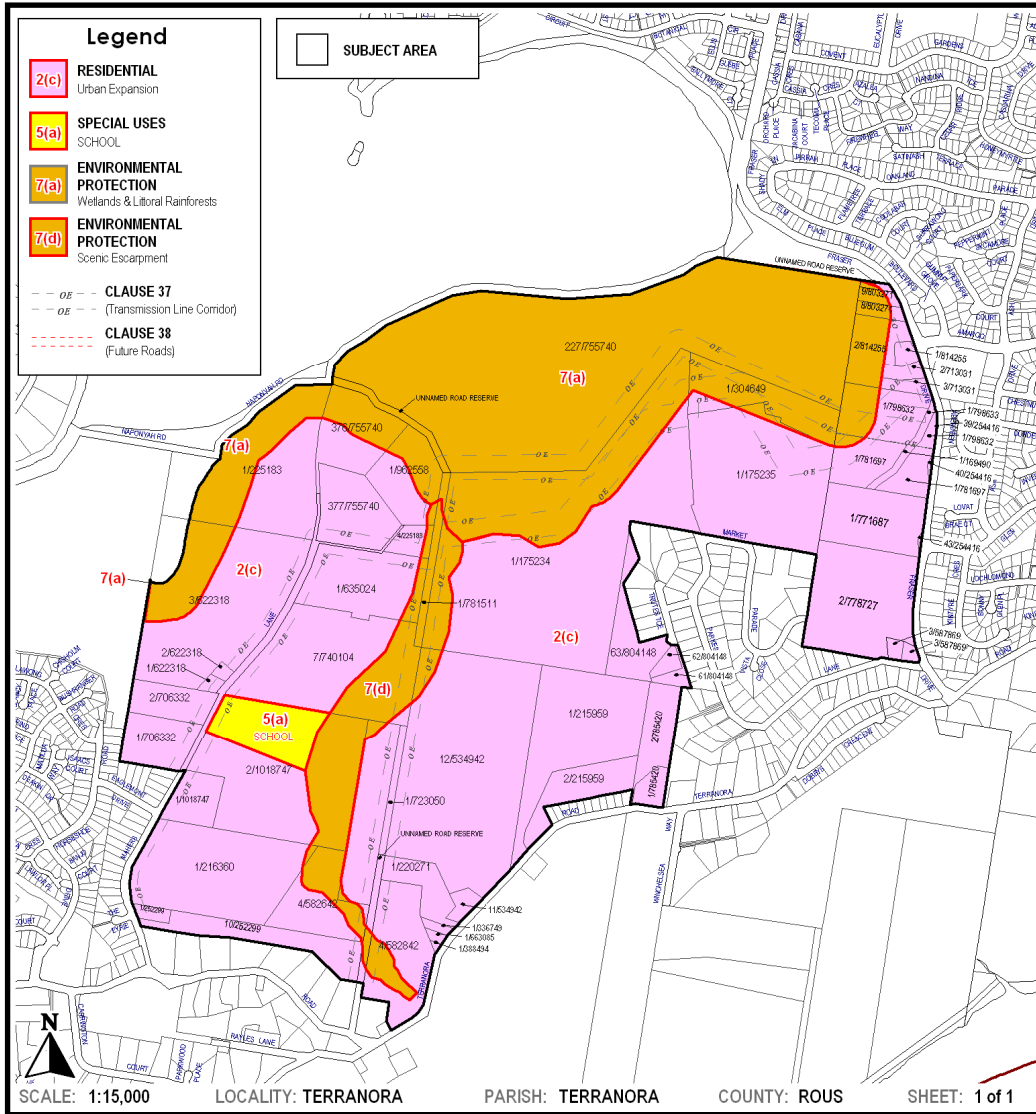
(4) Stormwater Management

(a) Objective

- Ensure that the management of urban stormwater is consistent with the 'Tweed Urban Stormwater Quality Management Plan' adopted by Council;

(b) The Council shall not consent to development on land to which this Clause applies, unless a Stormwater Management Plan has prepared by the applicant that demonstrates to the satisfaction of Council that the development generally complies with the "Tweed Urban Stormwater Quality Management Plan" adopted by Council.

APPENDIX B



ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979 TWEED DRAFT LOCAL ENVIRONMENTAL PLAN 2000 AMENDMENT No. 10		
DRAWN BY: J. Batchelor DATE: 07/10/2004	STATEMENT OF RELATIONSHIP WITH OTHER PLANS	
SUPERVISING DRAFTER:	AMENDS: TWEED LOCAL ENVIRONMENTAL PLAN 2000	
PLANNING OFFICER: Eber Butron		
COUNCIL FILE No. GTI/LEP/2000/10		
DEPT. FILE No.: G94/00396	CERTIFIED IN ACCORDANCE WITH THE ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979, AND REGULATIONS	
GOVT. GAZETTE OF:	_____ GENERAL MANAGER _____	_____ DATE _____

draft

Tweed Local Environmental Plan 2000 (Amendment No 10)

under the

Environmental Planning and Assessment Act 1979

I, the Minister Assisting the Minister for Infrastructure and Planning (Planning Administration), make the following local environmental plan under the *Environmental Planning and Assessment Act 1979* (.....)

Minister Assisting the Minister for Infrastructure and Planning (Planning Administration)

draft

Tweed Local Environmental Plan 2000 (Amendment No 10)

1. Name of plan

This plan is the *Tweed Local Environmental Plan 2000 (Amendment No 10)*.

2. Aims, objectives etc

This plan aims to:

- a) Zone certain land at Terranora Urban Release Area (Area E) 2(c) Urban Expansion, 7(d) Environmental Protection (Scenic/Escarpment), 7(a) Environmental Protection (Wetlands and Littoral Rainforests), and 5(a) Special Uses (School), to reflect the land's capability, suitability and characteristics.
- b) Amend provisions of *Tweed Local Environmental Plan 2000* as they relate to the subject land to reflect changes and standards for urban design and environmental impact;
- c) Provide for efficient and consolidated urban growth;
- d) Protect local environmental and landscape values of wetlands, remnant vegetation and Terranora Broadwater; and
- e) Protect urban development from environmental hazards.

3. Land to which plan applies

This plan applies to land known as Terranora Urban Release Area (Area E) as shown edged heavy black on the map marked Tweed Local Environmental Plan 2000 (Amendment No 10) deposited in the office of Tweed Shire Council.

4. Amendment of Tweed Local Environmental Plan 2000

Tweed Local Environmental Plan 2000 is amended by

- a) inserting in appropriate order in Part 2 of Schedule 6 the words:
Tweed Local Environmental Plan 2000 (Amendment No 10).
- b) By inserting after clause 39(2) the following sub-clauses:-
 - (3) When preparing a development application for use of the land to which this plan applies, the applicant shall clearly demonstrate:-
 - i. the likely contaminants within the soil, surface water and groundwater as a result of previous land uses;
 - ii. that an effective testing regime has been implemented to identify hotspots of contamination pursuant to current EPA guidelines including a consideration of the hydrogeology of the land;

- iii. that appropriate thresholds and criteria have been used in the assessment of potential contamination;
- iv. that the land does not pose a significant threat to human health or the environment;
- v. that if contamination has been identified that an appropriate remedial action plan can be developed to demonstrate how identified risks can be reduced to acceptable levels and that remediation is practical;
- vi. that an adequate monitoring program can be implemented.

c) By inserting after clause 39(2) the following sub-clauses:-

53A – Specific Provisions for Terranora Urban Release Area E

1. This clause applies to land known as Terranora Urban Release Area (Area E) as shown edged heavy black and coloured on the map marked "Tweed Local Environmental Plan 2000 (Amendment No.10)";
2. Preliminary Planning
 - (a) Objectives
 - i. To ensure a development control plan, developer contribution plan and master plan has been developed for the entire site to avoid ad hoc development and ensure equitable cost sharing in the provision of public amenities and services
 - ii. To ensure that issues relating to contaminated land are dealt with to a sufficient level to meet the requirements of State Environmental Planning Policy No 55—Remediation of Land
 - (b) Pursuant to the *Environmental Planning and Assessment Amendment (Preliminary Planning) Regulation 2000*, Council shall not consent to development on land to which this clause applies unless:
 - i. a development control plan has been approved for the land, and
 - ii. a contributions plan has been approved for the land, and
 - iii. the development application makes comprehensive proposals for development of the land or consent has already been granted to such a development application, and
 - iv. there is a master plan for the land, and the consent authority has taken the master plan into consideration, and
 - v. that the extent of any contaminated land is known to an extent necessary to allow the location of sensitive land uses at both the structure plan and master plan preparation stage.
3. Wetlands Rehabilitation and Management
 - (a) Objective
 - i. To restore and protect freshwater wetland values and minimise breeding habitat for salt water mosquitoes and biting midges;
 - (b) The Council shall not consent to development on land to which this Clause applies unless the applicant demonstrates to the satisfaction of Council that the development complies with a Wetlands Rehabilitation and Management Plan which has been prepared for wetlands

within the area. Such a Wetlands Rehabilitation and Management Plan shall identify the way in which the wetland is to be restored and managed to restore freshwater wetland values and minimise breeding habitat for saltwater mosquitoes and biting midges. The plan will also include details of costs and works required to undertake this rehabilitation.

4. Stormwater Management

(a) Objective

i. Ensure that the management of urban stormwater is consistent with the 'Tweed Urban Stormwater Quality Management Plan' adopted by Council;

(b) The Council shall not consent to development on land to which this Clause applies, unless a Stormwater Management Plan has prepared by the applicant that demonstrates to the satisfaction of Council that the development generally complies with the "Tweed Urban Stormwater Quality Management Plan" adopted by Council.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

1. Attachment A - Public Exhibition Submissions (DW 1279106)
 2. Attachment B - Traffic & Transport LES Update (DW 1279330)
 3. Attachment C - Draft DCP Area E (DW 1279098)
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