

# State Significant Development Modification

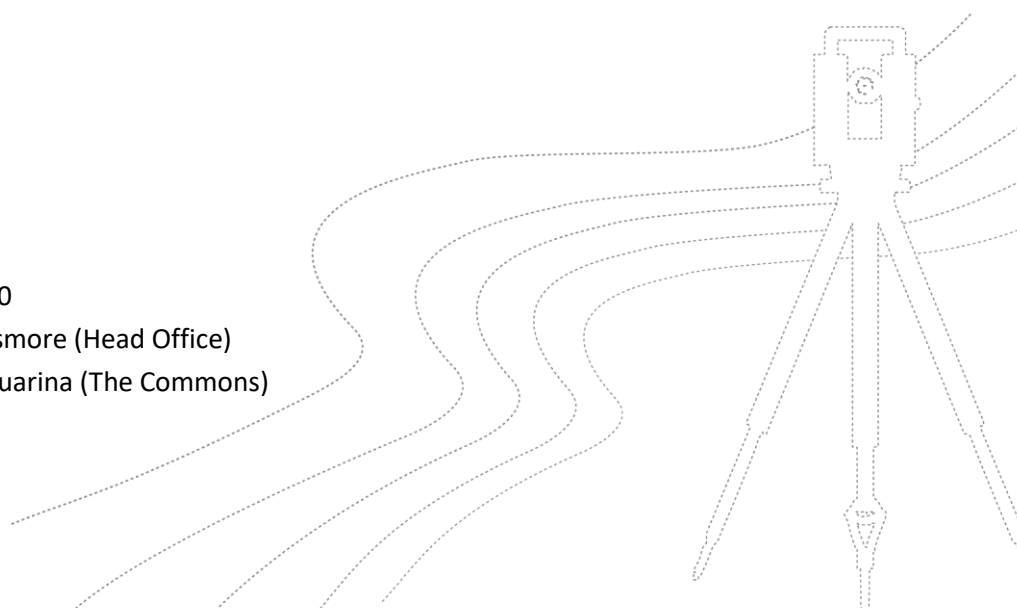
PROPERTY: 4 Winchelsea Way, Terranora  
OUR REF: 230446  
DATE: October 2024



## DOCUMENT AND PROJECT DETAILS

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Proponent:	Winchelsea Way Pty Ltd
Date of issue:	October 2024
Project address	4 Winchelsea Way, Terranora
Property Description	Lot 1 DP 595863 Parish of Terranora County of Rous
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Local Authority	Tweed Shire Council

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<b>Attachment 2</b>	Amended Subdivision Layout <i>B&amp;P Surveys</i>
<b>Attachment 3</b>	Civil Engineering Report <i>Cozens Regan Group Pty Ltd</i>
<b>Attachment 4</b>	Ecological Constraints Assessment <i>Biodiversity Australia</i>
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<b>Attachment 9</b>	Landowner Consent to amend easement Lot 1 DP 595863 <i>Sherpa Property</i>

## 1.0 Executive Summary

This Modification Application before the Department of Planning, Housing and Infrastructure seeks to modify the approved subdivision layout and associated conditions of consent under DA 242-10-2004 as it relates to Lot 1 DP 595863, being 4 Winchelsea Way, Terranora.

The proposal seeks to undertake the following key modifications to the approved subdivision.

- Delete the requirement to upgrade the intersection of Winchelsea Way and Terranora Road through an amendment to Condition B7.
- Modify the subdivision layout and reduce the internal community title access road to reflect current Planning for Bushfire Guidelines 2019 requirements.
- Modify the approved subdivision lot layout with a compliant 4,000m<sup>2</sup> lot area with an increased residue lot size.
- Amend Condition B8 to reflect the current site vegetation as a result of the Rusty Plum and Long-leaved Tuckeroo trees being removed through an amendment to Conditions B2, B8, B9, E8 & E10.

## 2.0 Background

Darryl Anderson Consulting Pty Ltd, on behalf of Buttons with Bows Pty Ltd (the applicant), lodged a Development Application (DA 242-10-2004) on 1 October 2004 to subdivide Lot 1 DP 595863 and Lot 3 DP 819065 Winchelsea Way, Terranora (Tweed Local Government Area). The application sought to subdivide the site into 15 rural residential lots (Lots 1 to 15) ranging from 4,000m<sup>2</sup> to 7,446m<sup>2</sup> and also create a rural residential lot. Roads and infrastructure works to support the subdivision were proposed, as were earthworks, filling of a dam and modification of a second dam for use as on an on-site stormwater detention basin also formed part of the Development Application.

The proposal provided for a community title subdivision and a draft Community Management Statement has been prepared. A SEPP 1 Objection was lodged to vary the development standard for the proposed residue lot below the 40ha minimum lot size.

At the time of lodgement, State Environmental Planning Policy No. 71 – Coastal Protection (SEPP 71) applied to the site, being within 100m of the Tweed River. The Minister was therefore the consent authority for the purposes of the Development Application.

The Department of Planning, Housing & Infrastructure (formerly Department of Planning at time of consent) issued the determination of DA 242-10-2004 on 12 June 2007. Consent was granted for the “subdivision of two existing lots to provide for 17 community title rural residential lots.”

### 3.0 Subject Site

The site is located off Winchelsea Way, Terranora approximately five kilometres west of Tweed Heads South. **Plate 1** provides a Locality Plan of the subject site.

Lot 1 DP 595863 has frontage to Terranora Road and has an approved Development Application for a community title subdivision consisting of 17 allotments of not less than 4000 square metres each, with common access separately from Winchelsea Way.

The northern portion of the site approved for subdivision is undulating and predominantly cleared, falling generally from west down to east. Small pockets of vegetation and isolated single remnant trees are scattered throughout the area, which is currently used for cattle grazing. An existing dwelling is located in the northwest corner of the site, which is proposed to be demolished as part of the development.

The southern portion of the site, comprising a residue lot of the approved subdivision, contains undulating grazing land with isolated remnant trees. The southern portion of the residue lot contains a steep slope down to the Tweed River. The steep slope is covered with predominantly rainforest vegetation and Camphor Laurel.

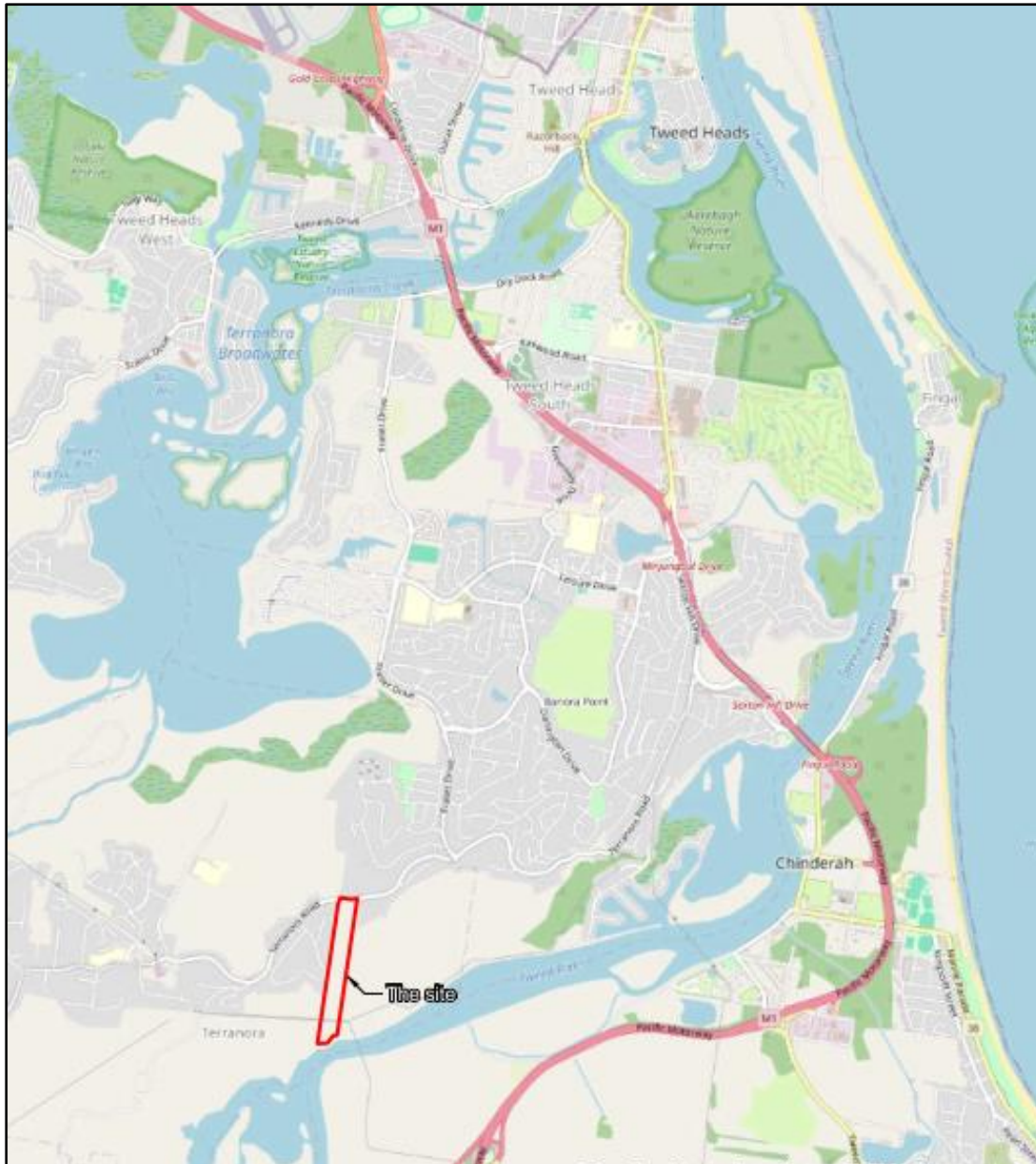
The northern boundary adjoins Terranora Road, which separates the site from existing large lot residential development to the north. The land to the east of the site contains a mixture of large lot residential development, rural dwellings and unmanaged vegetation comprising predominantly rainforest and Camphor Laurel trees.

The adjoining land to the west contains established large lot residential development within managed grounds, while the land to the southwest on the steep, south facing slope, contains rainforest and Camphor Laurel trees.

The site enjoys views predominantly to the east and southeast across the Tweed River and beyond to the coast, with the upper cleared areas the subject of this proposal also visible from adjoining properties and Terranora Road.

There are no significant watercourses or landform features on the property. A small drainage line traverses from west to east through the central portion of the site into an existing dam, mid-way along the eastern boundary.

See **Plate 1** below for further development context.



**Plate 1: Locality Plan of the Subject Site**

(Source: TSC GIS Mapping)

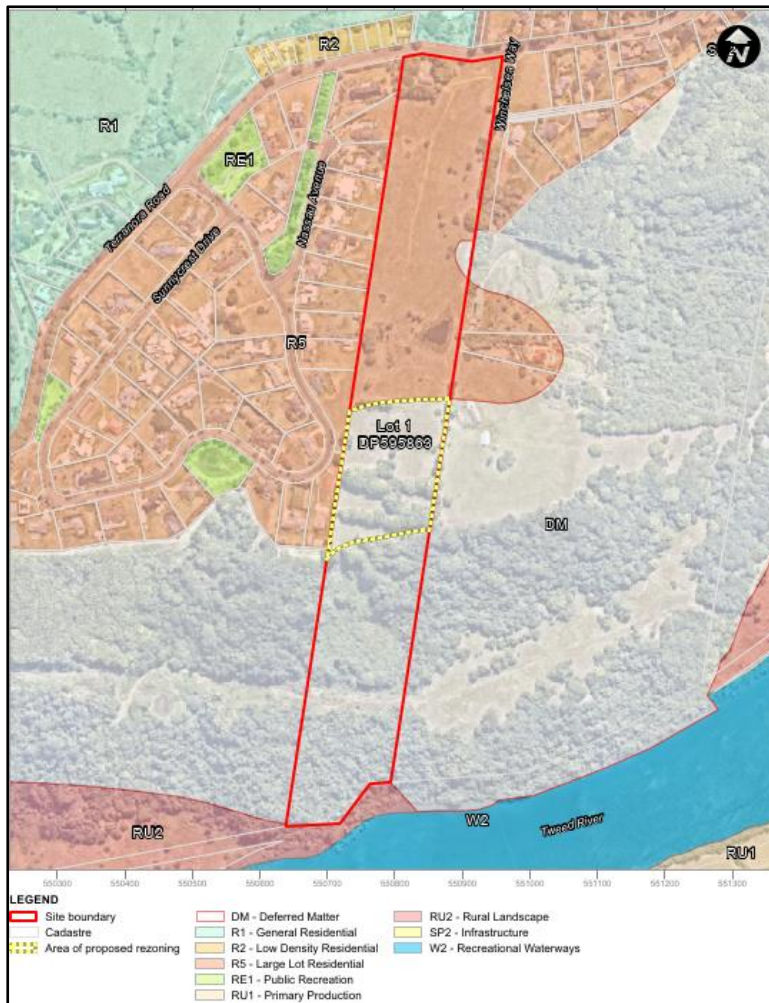
The site is currently zoned R5 Large Lot Residential, DM Deferred Matter under Tweed LEP 2014 and 7(d) Environmental Protection (Scenic/Escarpment) under Tweed LEP 2000.

The northern portion of the site, subject to the proposed subdivision, is zoned R5 Large Lot Residential under the provisions of Tweed Local Environmental Plan 2014.

The southern (residue) portion of the site is zoned DM Deferred Matter (7(d) Environmental Protection (Scenic/Escarpment) under Tweed LEP 2000).

The site contains an existing dwelling in the north-western corner, which has access from Winchelsea Way. The existing dwelling and surrounding trees (predominantly Camphor Laurel) are proposed to be demolished as part of the subdivision.

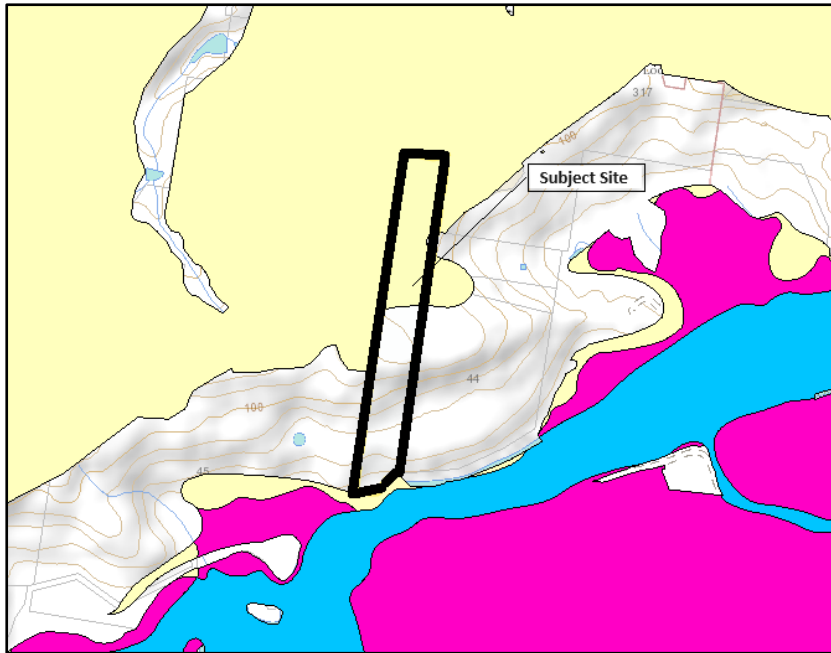
The current land zonings and area of the site which is subject to a separate Planning Proposal with Tweed Shire Council are illustrated in **Plate 2** of this report.



**Plate 2: Current Land Zoning**

### Acid Sulfate Soils

The subject site is mapped as Class 5 acid sulphate soils (refer to **Plate 3**). An Acid Sulfate Soil Management Plan is required to accompany any application for works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the water table is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land.



**Plate 3: Acid Sulfate Soil Mapping**  
(Source: NSW Planning Spatial Viewer)

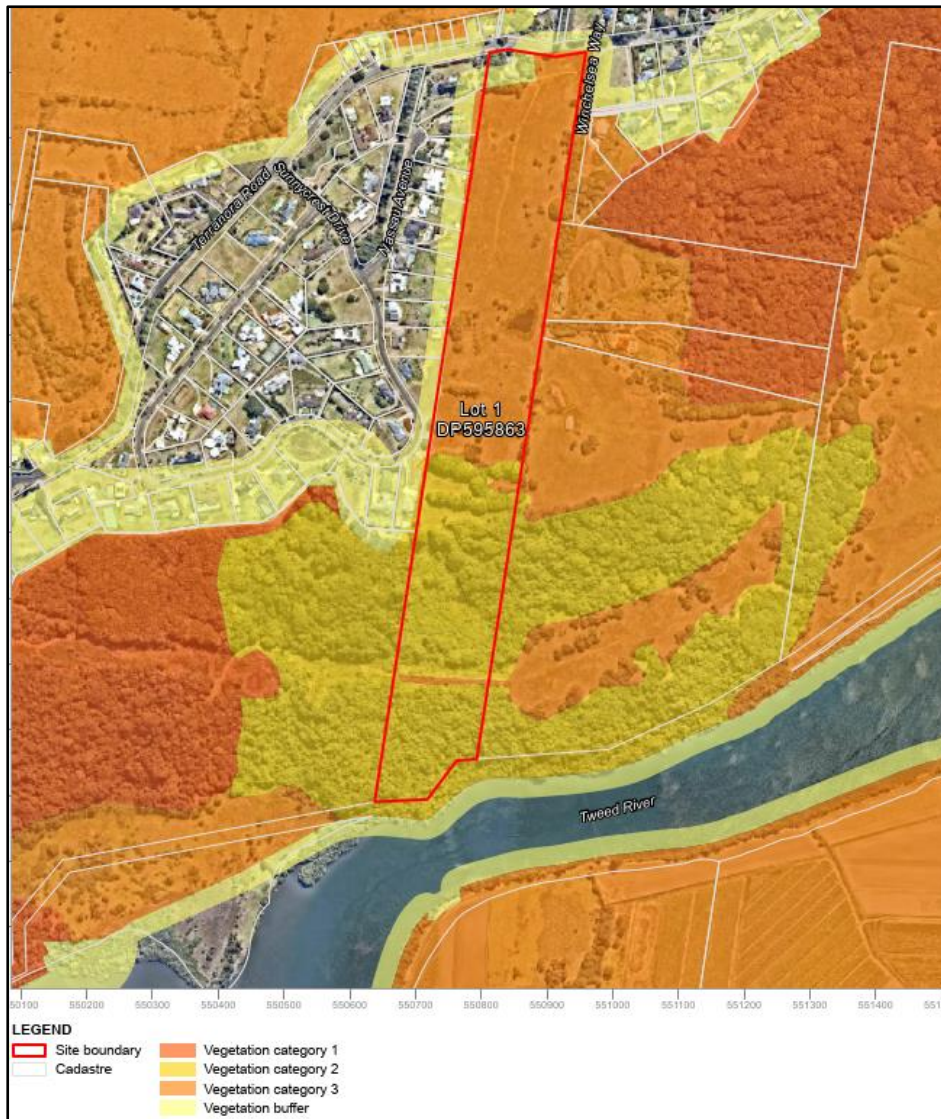
### **Bushfire Prone Land**

Tweed Shire Council's bushfire prone land mapping has been prepared as a requirement of Section 10.3 of the EP&A Act and in accordance with the NSW Rural Fire Service's (RFS) Guideline to Bushfire Prone Land Mapping. Tweed Shire Council's bushfire prone land mapping indicates that the site is bushfire prone land, with the northern portion mapped as Category 3 vegetation and the southern portion mapped as Category 2 vegetation.

Bushfire prone land mapping for the site and immediate surrounds is shown in **Plate 4**.

A Bushfire Hazard Assessment has been prepared by GeoLINK dated January 2024 (**Attachment 5**). The Bushfire Hazard Assessment has taken into consideration the proposed development layout, the nature of surrounding land use and the vegetation creating a bushfire hazard, the effective slope and Fire Danger Index for the site in accordance with Planning for Bush Fire Protection 2019. The assessment includes a Performance Solution to determine an appropriate asset protection zone distance to the south due to the effective slope exceeding 20° and a Performance Solution to address the proposed access, which relies on a dead-end road greater than 200m in length.

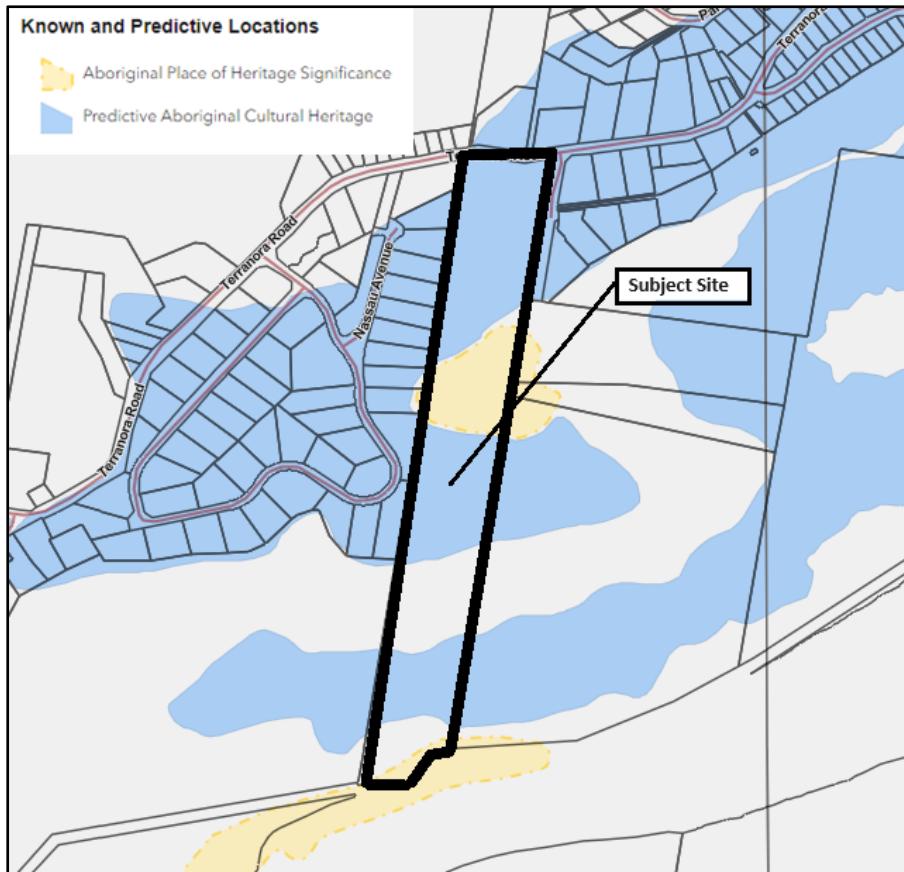
The Bushfire Hazard Assessment demonstrates that the site is suitable for the proposed subdivision, with appropriate bushfire protection measures able to be implemented in accordance with the requirements of Planning for Bush Fire Protection 2019.



**Plate 4: Bushfire Prone Land**  
 (Source: TSC GIS Mapping)

**Aboriginal Heritage**

As shown on **Plate 5**, the site is mapped as an Aboriginal Place of Heritage Significance and Predictive Aboriginal Cultural Heritage. Referral to the Tweed Byron Local Aboriginal Land Council (TBLAC) and an Aboriginal Cultural Heritage Consultant would be required to ensure that any future development will not impact upon Aboriginal cultural heritage.



**Plate 5: Aboriginal Cultural Heritage**

(Source: TSC GIS Mapping)

### Visual Impact

While the Modification seeks to create an amended lot layout within the existing urban boundary on the subject site, the visual alteration has been assessed as being minor and the overarching scenic value of the site is not considered to be compromised.

This position is derived from the limitation of the R5 zoning above the 110m-120m AHD contours which in turn enables the retention of the existing subtropical vegetation within the southern portion of the site to provide an effective bordering of the R5 precinct. This southern vegetation border forms part of a strong visual feature, orientated in a predominately east-west configuration, defining the urban boundaries of Terranora to the rural landscapes below. This existing setting and character of the Terranora ridgeline when viewed from the south, comprises residential dwellings located within non vegetated tracts, closely hugging the ridgeline. These dwellings are viewable from neighbouring properties, elevated land, as well as Tweed Valley Way and the Pacific Highway from a distance.

## 4.0 Proposed Amendment to DA 242-10-2004

The proposal seeks to undertake the following key modifications to the approved subdivision.

- Delete the requirement to upgrade the intersection of Winchelsea Way and Terranora Road through an amendment to Condition B7.
- Modify the approved subdivision lot layout with a compliant 4,000m<sup>2</sup> lot area with an increased residue lot size.
- Amend Condition B8 to reflect the current site vegetation as a result of the Rusty Plum and Long-leaved Tuckeroo trees being removed through an amendment to Conditions B2, B8, B9, E8 & E10.
- Modify the subdivision layout and reduce the internal community title access road to reflect current Planning for Bushfire Guidelines 2019 requirements.

The above amendments are discussed in further detail below.

### 4.1 Amend Condition B7

Currently, Condition B7 incorporates the following requirements.

- (1) *Kerb and gutter, stormwater drainage, full road width pavement including traffic facilities (roundabouts, median island etc.) and paved footpaths shall be constructed along full length of the new access road.*
- (2) *The intersection of Terranora Road and Winchelsea Way is to be upgraded as follows:*
  - a) *provision of a 'Type B' intersection in accordance with Austroads Guide to Traffic Engineering Practice Part 5;*
  - b) *provision of a left-turn deceleration lane for westbound traffic on Terranora Road;*
  - c) *provision of a bus lay-by on the northern side of Terranora Road as well as the nominated bus bay on the south side of Terranora Road;*
  - d) *provision of kerb and gutter for the full Terranora Road frontage of the development, including the bus bay, as well as the deceleration lane on the eastern side of Winchelsea Way; and*
  - e) *street lighting is to be provided, particularly in the vicinity of the bus bays and will need to be re-assessed for the new intersection; all external lighting is to comply with AS4282:1997 Control of the Obtrusive Effects*
  - f) *provision of concrete path paving from the proposed new road off Winchelsea Way to the bus bays on Terranora Road.*

*The plans for the abovementioned works shall be submitted to Council for approval pursuant to Section 138 of the Roads Act 1993, and must include all works required to lower the road pavement in Terranora Road to achieve the design sight distances. The plans must also include a Traffic Control Plan (refer to Condition C4).*

- (3) *Road widening may be required on the south side of Terranora Road fronting the site, to ensure a 3.5m wide (minimum) footpath area is provided from the bus bay to the property boundary. Any required road widening is to be constructed and dedicated to Council at no cost.*

(4) Lot 2 is required to have a splay corner constructed and dedicated to Council at no cost.

(5) All lots fronting Terranora Road are not permitted vehicular access to that road.

(6) An access handle shall be provided across Lot 16 to serve Lot 17, within the part of Lot 16 zoned 1(c) and not within that part of the lot zoned 7(d). Details of this design are to be submitted to the satisfaction of the Certifying Authority.

Subsequent to the most recent Development Consent being issued, it is understood that both the posted speed and pavement height has changed on Terranora Road, which has resulted in the request to review specific conditions regarding Terranora Road.

A detailed assessment has been completed by Bitzios Consulting as contained within **Attachment 6** of this report. The assessment has included a detailed review of two primary requirements under Condition B7, as outlined below.

- (1) Condition 2(a) provision of a 'Type B' intersection in accordance with Austroads Guide to Traffic Engineering Practice Part 5, and Condition 2(b) provision of a left-turn deceleration lane for westbound traffic on Terranora Road
- (2) Condition 2 (advice note) the aforementioned works shall include all works required to lower the road pavement in Terranora Road shall be provided to achieve the design sight distances

Based on the assessment by Bitzios Consulting, the following findings have been reached.

The traffic volumes for the 10-year design horizon warrant a CHR(s) and AUL(s) turn treatments for the intersection.

- A sight distance review has shown a deficiency to the west, hence it is recommended to upgrade the warranted CHR(s) to a CHR, and the grade for the first 6m of the Winchelsea Way leg is raised slightly to allow a vehicle to 'prop' level with the intersection, improving visibility to/from vehicles on Winchelsea Way, driver awareness and safety. Improvements to safety are considered sufficient to mitigate the sight distance deficiency.
- The CHR allows for a vehicle turning right out of Winchelsea Way to store in the median clear of through traffic in the case of an emergency.

The above findings are recommended to inform amendments to Condition B7, considering the road network changes since the implementation of the condition (i.e. lowering of the Terranora Road speed limit). It is therefore proposed to amend Condition B7 as follows:

- Modify Condition B7(2)(a)/(b) with "provision of a CHR and AUL(s) treatments at the intersection in accordance with Austroads Guide to Road Design Part 4".
- Modify Condition B7(2) to include after sub-clause (f) "More prominent intersection approach warning signage (eastbound approach) and improvements to the grades on Winchelsea Way at the intersection up to 6 metres back from the give-way line should be incorporated into the proposed intersection design."

## 4.2 Modify the Subdivision Layout

The proposal seeks to amend the approved lot layout to reflect the modified internal road width which accords to the NSW planning for Bushfire Protection Guidelines 2019.

The amended layout retains the originally approved number of lots, however provides for eleven (11) lots on the western side of the modified internal road. The modified layout ensures all lots adhere to the prescribed minimum lot size, whilst increasing the land area of the residue lot (Lot 16) from 9.48 hectares to 10.051 hectares.

The amended Plan of Subdivision prepared by B & P Surveys is provided within **Attachment 2** of this report. The associated civil designs for the modified layout are contained within the Engineering Services Report provided at **Attachment 3** of this report.



Plate 6: Approved Subdivision Layout

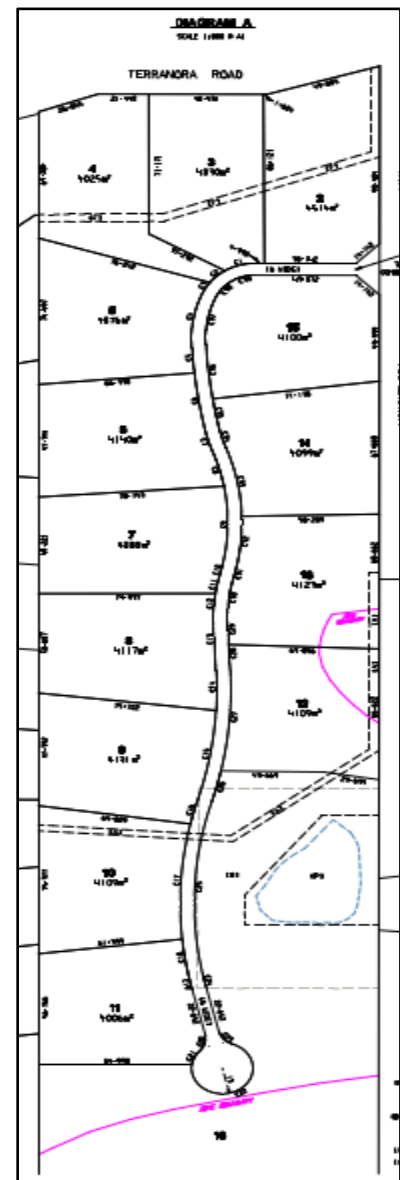


Plate 7: Proposed Layout

**Table 1: Approved & Proposed Lot Areas**

Originally Approved		Modified	
Lot	Area	Lot	Area (m <sup>2</sup> )
1 Neighbourhood Lot	Nil provided on stamped plan	1 Neighbourhood Lot	3428m <sup>2</sup>
2	4035m <sup>2</sup>	2	4514m <sup>2</sup>
3	4000m <sup>2</sup>	3	4030m <sup>2</sup>
4	4000m <sup>2</sup>	4	4025m <sup>2</sup>
5	4080m <sup>2</sup>	5	4076m <sup>2</sup>
6	4020m <sup>2</sup>	6	4140m <sup>2</sup>
7	4090m <sup>2</sup>	7	4088m <sup>2</sup>
8	4080m <sup>2</sup>	8	4117m <sup>2</sup>
9	4045m <sup>2</sup>	9	4131m <sup>2</sup>
10	4830m <sup>2</sup>	10	4109m <sup>2</sup>
11	7440m <sup>2</sup>	11	4006m <sup>2</sup>
12	4035m <sup>2</sup>	12	4109m <sup>2</sup>
13	4000m <sup>2</sup>	13	4123m <sup>2</sup>
14	4000m <sup>2</sup>	14	4099m <sup>2</sup>
15	3970m <sup>2</sup>	15	4100m <sup>2</sup>
16	9.48 Ha	16	10.051 Ha

In regard to proposed Lot 12, reference is made to the reduction in the easement for water supply (DP 617477) area which surrounds the existing dam as illustrated on B&P Survey 'Proposed Subdivision Plan', dated 29 April 2024 (refer **Attachment 2** of this report). The benefitted parties have provided their landowner's consent to the proponent, as contained within **Attachment 9** of this report for the reduction in the easement area. An adjustment to the configuration of the dam will also be included as part of this process and subject to a Stormwater Management Plan as included within **Attachment 3** of this report.

Further reference is made to the minor adjustment of each approved lot through the adherence of the community title lot being reduced in width to accord with the Planning for Bushfire Guidelines (2019) as outlined below in Section 4.3 below.

In respect to earthworks required to facilitate the modified development, the earthworks will be similar to that previously proposed resulting in cut and fill for the proposed access driveway and associated services installation. No material is expected to be imported to site and any additional material won on site will be reused for minor reshaping works as required.

A geotechnical assessment by Geotech Investigations Pty Ltd has been undertaken on the site. The assessment has highlighted issues such as poor drainage areas which would require provisions during the detailed design stage.

All earthworks will be done to Level 1 Geotechnical Supervision, with consideration of the previous geotechnical reports undertaken by Geotech Investigations and the “Materials Quality Assessment for Subsurface Materials” undertaken by Border-tech and previously accepted by Council.

Regarding stormwater, the existing site is rolling hills with defined gullies and ridges generally sloping from south to north. Levels within the proposed subdivision footprint range from RL 140.0m AHD to RL122.0m AHD. Natural existing gullies form the current discharge locations from the site and are catered for within adjacent properties via culverts and existing drainage channels. An existing dam is located on lot 1 DP 595863 which discharges to an adjacent culvert and drain on the boundary of Lot 1 DP 807182 and Lot 2 DP819065 when overtopping occurs.

The concept drainage for the development prepared by Cozen Regan (**Attachment 3**) consists of pit and piped drainage system for the proposed driveway to discharge to the existing on-site dam for catchments along the western edge of the site within Lot 1 DP 595863, remains unchanged. Discharge water quality is subject to compliance with the requirements of the “Tweed Urban Stormwater Management Plan” and the requirements of Appendix E “D7 - Stormwater Quality”.

The proposed amendment to the approved subdivision layout will result in the amendment to the description of the development within Condition A2 and to listed approved plans within Condition A3 as outlined below.

Insert within Condition A2 (1)(a)

- (a) 16 rural residential lots on land zoned 1(c) Rural Living, all greater than 4,000m<sup>2</sup>. Lots 13 and 14 contain approximately 300m<sup>2</sup> of 7(d) Environmental Protection (Scenic Escarpment) zoned land.
- (d) Earthworks including the filling of one dam on site within proposed Lots **10 & 11** and modification of an existing dam on proposed Lot **12 16** for use as on-site stormwater detention basin.

Insert within Condition A3

Drawing No.	Name of Plan	Date
26120 B (Rev C)	Proposed Subdivision Lot 1 in DP 595863	29.04.24

### 4.3 Modify Conditions B2, B8, B9, E8 & E10

Conditions B2, B8, B9, E8 & E10 of DA-242-10-2004 state that the Rusty Plum and Long-leaved Tuckeroo which are supposedly located in the Melaleuca stand in the southwest of the development footprint be retained and protected in situ. This application recommends that these two species are removed from the DA consent conditions.

A Juvenile Rusty Plum (*Niemeyera whitei*) was supposedly recorded by Biolink in 2002, however the species was not recorded by Biodiversity Australia during a targeted survey conducted in November 2023. The specimen was similarly not located during extensive surveys completed by JWA in 2010. It is thought that this species may have been previously misidentified.

As the species was not located during the most recent survey, no management actions have been provided in the VMP (refer **Attachment 7**) and it is requested that this species is removed from the consent conditions.

A Long-leaved Tuckeroo (*Cupaniopsis newmanii*) located within the melaleuca stand in the southwest of the development footprint is required to be retained and fenced as per consent Conditions B2, B8, B9, E8 & E10. Biodiversity Australia (refer **Attachment 4**) has recommended that this species is removed from the approval due to the lack of legal status. The long-leaved Tuckeroo is not listed as Threatened or Endangered under state or federal legislation. The advice from Biodiversity Australia identifies this species is listed as a ROTAP species. ROTAP listing has no legal status, since the EPBC Act was enacted in 1999, ROTAP listing is largely irrelevant. The Ecological Assessment which accompanied the DA was undertaken by Biolink in 2002. Over 20 years have passed since that assessment and ROTAP listings are rarely used. The list has not been updated since 1996. The NSW Threatened Species Scientific Committee has not listed this species as threatened since. Biodiversity Australia conclude the requirement to retain this species should be removed from DA 242-10-2004.

#### 4.4 Incorporate Planning for Bushfire Protection 2019

The Modification Application seeks to amend the bushfire conditions for the subdivision. The proposed road layout and servicing of the development is substantially unchanged.

As part of the Modification Application, an updated Bushfire Safety Authority will be required from the NSW RFS. As part of this process, it is recommended that the bushfire safety conditions in DA 242-10-2004 also be updated to reflect the requirements of PBP 2019.

**Table 2** outlines the current bushfire protection conditions of DA 242-10-2004 and the proposed modification of these conditions.

**Table 2: Bushfire Amendments**

DA 242-10-2004 Condition	Proposed Modification
<p><b>E9 Asset Protection Zones</b> Asset protection zones shall be established on all lots in accordance with the requirements of the NSW Rural Fire Service, prior to the issue of a Subdivision Certificate.</p>	<p>Delete Condition and replace with the APZ condition outlined in Section 5 of the Bushfire Hazard Assessment contained within <b>Attachment 5</b>.</p>
<p><b>E11 Community Management Statement</b> The Community Management Statement shall be amended as follows:</p> <p>2. All current and future landholders are to maintain asset protection zones to the satisfaction of the NSW Rural Fire Service and in accordance with the Bushfire Evacuation Plan</p>	<p>Delete Part (2). Reference should be made to Section 5 of the Bushfire Hazard Assessment as contained within <b>Attachment 5</b> of this report which discusses the prescribed APZ.</p>

DA 242-10-2004 Condition	Proposed Modification
<p>and Bushfire Management Plan, once approved by the RFS required by conditions F1 and F2.</p>	
<p><b>F1 Bushfire Evacuation Plan</b>            A Bushfire Evacuation Plan is to be submitted for approval of the RFS prior to the issue of a Construction Certificate detailing under what circumstances the complex will be evacuated, the evacuation meeting point, the roles and responsibilities of those co-ordinating the evacuation and those remaining with the complex after evacuation, and a procedure to contact the RFS District Office / NSW Fire Brigade and inform them of the evacuation and meeting point.</p>	<p>Delete condition.</p> <p>A Bushfire Evacuation Plan is not required for the proposed subdivision.</p> <p>Individual landholders should be advised to prepare a Bushfire Survival Plan in accordance with RFS Guidelines.</p>
<p><b>F2 Bushfire Management Plan</b>            A Bushfire Management Plan is to be prepared to the satisfaction of the RFS prior to the issue of a Construction Certificate and shall address the following requirements:</p> <ol style="list-style-type: none"> <li>Contact person and details;</li> <li>Schedule and description of works for the construction of Asset Protection Zones and their continued maintenance;</li> <li>Management strategies, proposed schedule and description of works of any remnant bushland within the property boundary;</li> <li>Details of access through any gates/ fire trail system for remnant bushland areas;</li> <li>Review period and reporting changes of contact details; and</li> <li>Reporting of works completed.</li> </ol> <p>Note: Although construction levels have been nominated in the bushfire protection assessment report, specific construction levels can not be specified for probable dwelling locations. As such construction levels in accordance with AS3959 will be assessed and nominated when development applications are submitted for the construction of dwellings on the approved lots.</p>	<p>Delete Condition and replace with bushfire protection conditions as follows:</p> <p>The entire area of Lots 2 – 15 are to be established and maintained as an Inner Protection Area in accordance with Appendix A4.1.1 of Planning for Bushfire Protection 2019.</p>
<p><b>New Conditions</b></p> <ul style="list-style-type: none"> <li>The new road is to comply with the following requirements of Table 5.3b of Planning for Bushfire Protection 2019:             <ul style="list-style-type: none"> <li>The cul-de-sac head is to incorporate a minimum 12 m outer radius turning circle.</li> <li>The capacity of road surfaces and any bridges/ causeways is sufficient to carry fully loaded firefighting vehicles (up to 23 tonnes).</li> <li>Bridges and causeways are to clearly indicate load rating.</li> </ul> </li> </ul>	<p>To achieve consistency with the Planning for Bushfire Protection 2019.</p>

DA 242-10-2004 Condition	Proposed Modification
<ul style="list-style-type: none"> <li>- Hydrants are located outside of parking reserves and road carriageways to ensure accessibility to reticulated water for fire suppression.</li> <li>- Hydrants are provided in accordance with the relevant clauses of AS 2419.1:2021.</li> <li>- Minimum 5.5 m carriageway width kerb to kerb.</li> <li>- Parking is provided outside of the carriageway width.</li> <li>- Curves of roads have a minimum inner radius of 6 m.</li> <li>- The road crossfall does not exceed 3 degrees.</li> <li>- A minimum vertical clearance of 4 m to any overhanging obstructions, including tree branches, is provided.</li> </ul> <ul style="list-style-type: none"> <li>• Water and electricity services are to comply with Table 5.3c of Planning for Bush Fire Protection 2019.</li> </ul>	

## 5.0 Planning Assessment

### 5.1 Introduction

Section 5 documents the range of planning controls and Council policies applicable to the application pursuant to Section 4.15 and Section 4.55 of the Act and tabulates the effect of these instruments on the proposed S4.55 application.

### 5.2 Section 4.55(2) EP&A Act 1979

#### **4.55(2) Modifications involving minimal environmental impact**

***A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:***

***(a) it is satisfied that the proposed modification is of minimal environmental impact, and***

**Comment:** The proposed modification relates to the approved subdivision layout and associated condition of consent relating to the upgrade of the Winchelsea Way and Terranora Road.

As detailed within the ecological review for the proposed modification, as contained in **Attachment 4** of this report, the key ecological impacts identified by Biodiversity Australia resulting from the sought modification include:

- *Reduction of aquatic habitat via the reduction of the eastern dam and filling of the western dam. This impact is not considered significant. No threatened fauna species have been recorded or are likely to utilise these dams. The dams are currently providing moderate habitat to common species. The dams comprise a mixture of native and exotic flora species, however exotic species dominate and cows regularly trample the banks.*

- *The Cassia marksiana will now fall within a lot (proposed Lot 10, Figure 3). This increases the potential for damage to this individual tree. A Section 88b instrument will need to be put in place to ensure it is protected in perpetuity.*
- *There will now be no buffer zone between proposed lot 11 and the Conservation zone to the south. This has the potential to increase the chance of edge effects and human damage to ecological values within the Conservation Zone. Given the vegetation within the 7(d) with adjoins the development footprint currently comprises pastoral grassland with scattered natives which is of low ecological value, it is unlikely for the 7(d) zone to be impacted.*

To address the above ecological impacts, Biodiversity Australia have recommended the following mitigation measures which may be incorporated into conditions of consent.

- *Ecologist/Spotter Catcher present on site during clearing/filling of dams to ensure no injury to fauna.*
- *Building Envelopes within proposed lots 10 and 11 are placed as far north as possible in order to retain a buffer along the 7(d) zone (Lot 11) and as far as possible from the Cassia marksiana (Lot 10).*
- *A Section 88b instrument is established on Lot 10 to ensure that the Cassia marksiana is retained in perpetuity.*
- *The 7(d) zone to the south should be clearly fenced to reduce damage via increase human activity. Fencing should be fauna friendly.*

Biodiversity Australia have concluded the ecological impacts associated with the proposed modification will be minimal and can easily be mitigated through the adoption of the above mitigation measures.

Accordingly, the proposed modifications to the existing consent are minor in nature, and do not result in any significant change to the environmental impacts of the development over and above those considered during the original assessment of the application. In this regard, the proposed modification is considered to be of minimal environmental impact.

***(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and***

**Comment:** As discussed throughout this report, the proposal seeks to amend the approved subdivision layout by modifying the internal road design and reducing the road width. In association with the modified road layout, the design of the approved lots is also amended, primarily through the re-siting of Lot 11 on the western side of the internal access road. The residue lot also increases in area from 9.48 hectares to 10.051 hectares. The proposed changes affect the subdivision envelope of the approved layout, maintain the approved number of lots and as such is considered to result in substantially the same development to that approved under DA 242-10-2004.

In reviewing the proposal to determine whether the amended layout is substantially the same, regard has been made to *Vacik Pty Ltd v Penrith City Council* [1992].

In *Vacik Pty Ltd v Penrith City Council* [1992], Stein J stated:

*Turning to the issue of s.102(1)(a). Is the proposed modified development substantially the same development as that in the development consent (as already amended)? In my opinion substantially when used in the section means essentially or materially or having the same essence.*

When assessing whether a proposed modification will result in ‘essentially or materially having the same essence’, a qualitative and quantitative assessment must be undertaken between the originally approved development and the development as proposed to be modified.

The modification to the approved subdivision layout and total number of lots will result in the approval of the DA 242-10-2004, having essentially or materially the same essence for the following reasons:

#### **Qualitatively:**

- The change of the subdivision layout will not impact upon the ability for the development to provide housing as approved under DA 242-10-2004;
- The proposed amendment to the subdivision layout is proposed to affect the subject site only and will not result in any changes to any other sites within the surrounding locality as the amended layout retains the approved subdivision envelope for residential housing, traffic generation and demand on infrastructure services.
- The proposed amended lot layout will not result in any additional impacts on adjacent properties in respect of privacy, amenity or overshadowing;
- Despite the proposal re-siting Lot 11 to the western side of the internal access road, it is not considered this will alter the appearance of the subdivision in respect of form or scale, as the allotment is retained within the southern portion of the subdivision area and as such unlikely to be highly visible from the public domain;

#### **Quantitatively:**

The proposed modification to the approved subdivision layout and associated conditions of consent is not anticipated to result in a detrimental impact within the Terranora area through the construction of the modified subdivision layout, as discussed elsewhere in this report.

In this regard, the modified layout will generate capacity for the approved number of dwellings and associated traffic movements. The site will also be connected to the reticulated water and sewer network. In this regard, the land is already approved for 15 lots and the modified layout will not increase the demand on the key infrastructure required to service the subdivision.

The proposed subdivision layout retains the same area upon the land approved for residential housing as approved under DA 242-10-2004.

It is therefore considered that the proposed modification to the lot layout, intersection treatment and internal design to accord with current planning for bushfire requirements results in substantially the same development as that approved by Development Application 242-10-2004.

The proposed amendment is considered to be substantially the same development to which consent was originally issued based on the following grounds:

- The modification retains the same development components as originally approved being the designated land use and associated operational components;
- The proposal ensures the subdivision adheres to the current Planning for Bushfire Guidelines 2019; and
- The proposed amendments do not modify the development’s consistency with relevant development design standards under the Tweed Local Environmental Plan 2014 and Tweed Development Control Plan.

**(c) it has notified the application in accordance with:**

**(i) the regulations, if the regulations so require, or**

**(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and**

**Comment:** Any required community consultation will be conducted by the Department of Planning, Housing & Infrastructure as part of the processing and assessment of this application.

**(d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.**

**Comment:** Any submissions received concerning the proposal are to be considered by Council as part of its assessment of the application.

**(3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.**

**Comment:** The following assessment is provided for those pertinent matters under s.4.15 of the EP&A Act.

## Local Plans

### Tweed Local Environmental Plan 2014

The applicable provisions of the Tweed Local Environmental Plan 2014 are detailed below, along with the proposed modified proposal’s response.

**Table 3: Tweed Local Environmental Plan 2014 Applicability**

Tweed Local Environmental Plan 2014		Applicable
<u>Part 4: Principal development standards</u>		
<b>4.1</b>	<b>Minimum subdivision lot size</b>	<input checked="" type="checkbox"/>
<b>4.1AA</b>	<b>Minimum subdivision lot size for community title schemes</b>	<input checked="" type="checkbox"/>
4.1A	Minimum subdivision lot size for Strata plan schemes in certain rural zones	<input type="checkbox"/>
4.1B	Minimum subdivision lot size for certain split zones	<input type="checkbox"/>
4.1C	Exceptions to minimum subdivision lot size for boundary adjustments	<input type="checkbox"/>

Tweed Local Environmental Plan 2014		Applicable
4.1D	Minimum lot size for certain residential accommodation in Zones R2 and RU5	<input type="checkbox"/>
4.2	Rural subdivision	<input type="checkbox"/>
<b>4.2A</b>	<b>Subdivision of land in Zone R5</b>	<input checked="" type="checkbox"/>
4.2B	Erection of dwelling houses and dual occupancies on land in certain rural and residential zones	<input type="checkbox"/>
4.2C	Erection of rural workers' dwellings in Zones RU1 and RU2	<input type="checkbox"/>
4.3	Height of buildings	<input type="checkbox"/>
4.4	Floor space ratio	<input type="checkbox"/>
4.5	Calculation of floor space ratio and site area	<input type="checkbox"/>
4.6	Exceptions to development standards	<input type="checkbox"/>
<u>Part 5: Miscellaneous provisions</u>		
5.1	Relevant acquisition authority	<input type="checkbox"/>
5.2	Classification and reclassification of public land	<input type="checkbox"/>
5.3	Development near zone boundaries	<input type="checkbox"/>
5.4	Controls relating to miscellaneous permissible uses	<input type="checkbox"/>
5.5	Controls relating to secondary dwellings on land in a rural zone	<input type="checkbox"/>
5.6	Architectural roof features	<input type="checkbox"/>
5.7	Development below mean high water mark	<input type="checkbox"/>
5.8	Conversion of fire alarms	<input type="checkbox"/>
5.9	Dwelling house or secondary dwelling affected by natural disaster	<input type="checkbox"/>
5.10	Heritage conservation	<input type="checkbox"/>
5.11	Bushfire hazard reduction	<input type="checkbox"/>
5.12	Infrastructure development and use of existing buildings of the Crown	<input type="checkbox"/>
5.13	Eco-tourist facilities	<input type="checkbox"/>
5.14	Siding Spring Observatory – maintaining dark sky	<input type="checkbox"/>
5.15	Defence communications facility	<input type="checkbox"/>
5.16	Subdivision of, or dwellings on, land in certain rural, residential or conservation zones	<input type="checkbox"/>
5.17	Artificial waterbodies in environmentally sensitive areas in areas of operation of irrigation corporations	<input type="checkbox"/>
5.18	Intensive livestock agriculture	<input type="checkbox"/>
5.19	Pond-based, tank-based and oyster aquaculture	<input type="checkbox"/>
5.20	Standards that cannot be used to refuse consent – playing and performing music	<input type="checkbox"/>
5.21	Flood planning	<input type="checkbox"/>
5.22	Special flood considerations	<input type="checkbox"/>
5.23	Public bushland	<input type="checkbox"/>
5.24	Farm stay accommodation	<input type="checkbox"/>
5.25	Farm gate premises	<input type="checkbox"/>
<u>Part 6: Urban release areas</u>		
6.1	Arrangements for designated State public infrastructure	<input type="checkbox"/>
6.2	Public utility Infrastructure	<input type="checkbox"/>
6.3	Development control plan	<input type="checkbox"/>
6.4	Relationship between Part and remainder of Plan	<input type="checkbox"/>
<u>Part 7: Additional local provisions</u>		
<b>7.1</b>	<b>Acid sulfate soils</b>	<input checked="" type="checkbox"/>
<b>7.2</b>	<b>Earthworks</b>	<input checked="" type="checkbox"/>
7.3	(Repealed)	<input type="checkbox"/>
7.4	Floodplain risk management	<input type="checkbox"/>
7.5	Coastal risk planning	<input type="checkbox"/>
7.6	Stormwater management	<input type="checkbox"/>

Tweed Local Environmental Plan 2014		Applicable
7.7	Drinking water catchments	<input type="checkbox"/>
7.8	Airspace operations	<input type="checkbox"/>
7.8A	Airspace operations – Murwillumbah Airfield	<input type="checkbox"/>
7.9	Development in areas subject to aircraft noise	<input type="checkbox"/>
<b>7.10</b>	<b>Essential services</b>	<input checked="" type="checkbox"/>
7.11	Council infrastructure development	<input type="checkbox"/>
7.12	Existing and future water storage facilities	<input type="checkbox"/>
7.13	Development requiring the preparation of a development control plan	<input type="checkbox"/>
7.14	Location of sex services premises	<input type="checkbox"/>
7.15	Industry – groundwater excavation, etc	<input type="checkbox"/>
7.16	Development at Wulffs Lane, Kielvale	<input type="checkbox"/>
7.17	Use of certain land at Cypress Crescent and Tweed Coast Road, Cabarita Beach	<input type="checkbox"/>
7.18	Use of certain land Kudgeree Avenue, Cudgera Creek	<input type="checkbox"/>
7.19	Development in local centres	<input type="checkbox"/>

As shown in **Plate 8**, the site is zoned R5 Large Lot Residential pursuant to the Tweed Local Environmental Plan 2014.



**Plate 8: Current Land Zoning**

### Clause 1.2 – Aims of the Plan

The aims of the plan set out under Clause 1.2 are as follows:

- (2) *The particular aims of this Plan are as follows—*
- (aa) *to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,*
  - (a) *to give effect to the desired outcomes, strategic principles, policies and actions contained in the Council’s adopted strategic planning documents,*
  - (b) *to stimulate and strengthen the role of Lismore as a regional centre for agriculture, business, education, health, recreation, tourism and the arts,*
  - (c) *to encourage a diverse range of housing, and the equitable and appropriate provision of services,*
  - (d) *to conserve the heritage of Lismore through the integration of heritage conservation into the planning and development control process,*
  - (e) *to protect, sustain and enhance Lismore’s natural environment, particularly native fauna and flora,*
  - (f) *to minimise the adverse effects of natural hazards, particularly flooding, bush fire and land instability,*
  - (g) *to ensure that development is consistent with the principles of ecologically sustainable development.*

**Comment:** The proposal retains the approved subdivision of land to create fifteen (15) community title lots. As a result, the amended development aims to achieve the desired strategic outcome for the area while providing land for residential housing.

### Clause 2.3 – Zone Objectives and Land Use Table

#### R5 Large Lot Residential

The relevant objectives of the R5 zone are provided below together with the proposal’s response:

- *To provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality.*
- *To ensure that large residential lots do not hinder the proper and orderly development of urban areas in the future.*
- *To ensure that development in the area does not unreasonably increase the demand for public services or public facilities.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To maintain the rural and scenic character of the zone.*

**Comment:** The current application proposes the creation of fifteen (15) community title lots with sixteen (16) lots designated for housing. The proposed modified subdivision is not considered to hinder the proper and orderly development of urban areas, unreasonably increase the demand for public transport or facilities, and does not result in land use conflict issues.

Given the above, it is considered that the proposal is consistent with the objectives applying to the R1 zone.

### Clause 2.6 Subdivision – consent requirements

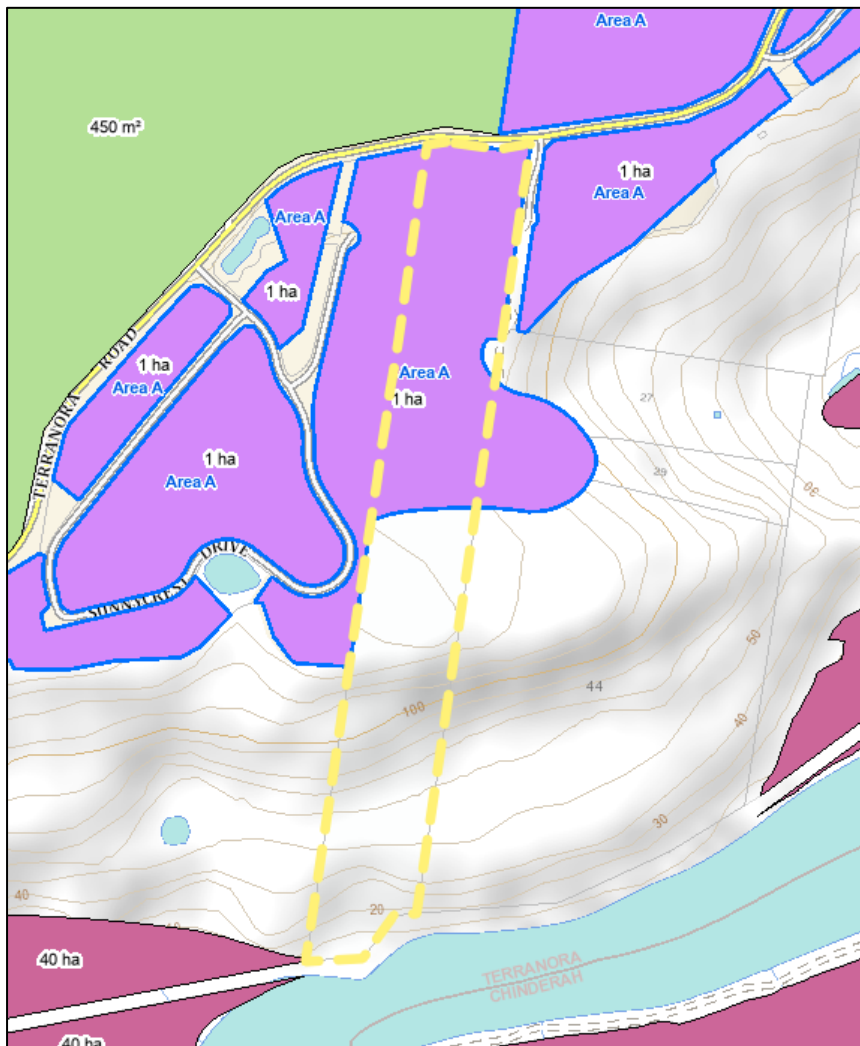
**Comment:** This application retains the approved number of lots, albeit in a modified layout. Accordingly, consent is sought for the subdivision as described in Section 4.

### Clause 4.1 – Minimum subdivision lot size

**Comment:** The subject land is mapped with a 1 hectare minimum lot size area, as illustrated in **Plate 9**. Reference is however made to the provisions of Clause 4.2A which nominates a smaller lot size for land zoned R5 Large Lot Residential.

**4.1AA Minimum subdivision lot size for community title schemes**

**Comment:** The amended subdivision layout retains compliance with the prescribed 4,000m<sup>2</sup> lot size applicable to the subject land as illustrated in **Plate 9** and outlined above in satisfying cl.4.1 of the Tweed Local Environmental Plan 2014.



**Plate 9: Minimum Lot Size Map (Intramaps 2024)**

**Clause 4.2A - Subdivision of land in Zone R5**

**Comment:** Despite Clause 4.1, development consent may be granted to subdivide land identified as “Area A” on the Lot Size Map for residential purposes to create a lot of a size that is not less than 0.4 hectares if the consent authority is satisfied the lot—

- (a) will be adequately connected to a water reticulation system or a rainwater tank, and
- (b) will be adequately connected to the Council’s sewage reticulation system, and
- (c) will not jeopardise the semi-rural character and environmental values of the area.

In this instance, the subject land is marked “A” as illustrated in **Plate 9**. As demonstrated within the

Engineering Services Report (**Attachment 3**), the proposed amended layout is able to be adequately serviced with all essential infrastructure (water & sewer).

As the modification relates to the approved urban area, with no increase the subdivision footprint, the amended layout is not envisaged to adversely impact the visual character of the locality.

#### Clause 7.1 – Acid Sulfate Soils

**Comment:** As illustrated in **Plate 3**, the subject land is mapped as containing Class 5 acid sulfate soils within the R5 zoned land area. In this instance, the proposal does not trigger consent for the carrying out of works on mapped acid sulfate soil land as the works will not be within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and lower the water table below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land.

#### Clause 7.2 – Earthworks

**Comment:** Clause 7.2 requires development consent be obtained for earthworks not classified as exempt development and establishes certain assessment criteria relating to such activities. Details with respect to the proposed ancillary earthworks are provided within the Concept Servicing Layout (**Attachment 3**). The following comments are made with respect to the assessment criteria contained in Clause 6.2 (3):

*(a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,*

**Comment:** The modified subdivision layout involves minimal site disturbance in order to deliver the amended lot layout. Reference should be made to the Concept Servicing Layout contained within **Attachment 3**. The drainage design for the site is addressed within the Engineering Services Report (**Attachment 3**). The proposed access way will be provided with kerb and gutter which will drain via the proposed stormwater drainage system to natural “watercourses.” Inter allotment drainage will be provided at the rear of those lots where roof water cannot be conveyed to the street gutter by gravitational means.

*(b) the effect of the development on the likely future use or redevelopment of the land,*

**Comment:** The earthworks proposed are minimal and will have a neutral effect on future redevelopment of the land in an appropriate manner that will be subject to a future assessment process.

*(c) the quality of the fill or the soil to be excavated, or both,*

**Comment:** Earthworks are limited to the construction of new services. Any excess material generated by the works may be respread onsite. Requiring removal of existing rock walls will create additional impacts of this development.

*(d) the effect of the development on the existing and likely amenity of adjoining properties,*

**Comment:** The proposal for minimal works to provide services is intended to minimise the impact on amenity of adjoining premises. The future development of Proposed Lot 2 will need to be the subject of future assessment processes beyond the scope of the current proposal.

*(e) the source of any fill material and the destination of any excavated material,*

**Comment:** Earthworks are limited to the construction of the amended lot layout. Any excess material generated by the works may be respread onsite.

(f) *the likelihood of disturbing relics,*

**Comment:** The DPHI assessment for Development Application 242-10-2004 addressed Aboriginal Cultural Heritage as follows:

*The DA was exhibited for 29 days over November-December 2004 with issues raised by Tweed Shire Council ("Council"), the former NSW Department of Environment and Conservation ("DEC"), and the Department's Regional Office as follows:*

- the removal of native vegetation and the need to obtain any relevant approvals for clearing of native vegetation, as required under the Native Vegetation Act 2003; this is to be dealt with as a deferred commencement condition.*
- the protection of Aboriginal heritage - the Aboriginal Heritage Information Management System (AHIMS) assessment identified a single Aboriginal prehistoric hand axe on Lot 1 DP 595863. The archaeological study indicated that the AHIMS record was an isolated occurrence and that based on the settlement pattern in the district, it is unlikely that this would be an Aboriginal habitation site;*
- A number of conditions are recommended to address the protection of the recorded Aboriginal site and threatened flora species, the provision of appropriate bushfire protection measures, the implementation of suitable stormwater control measures and the upgrade of access arrangements. It is considered that compliance with these conditions will ensure that the site can be suitably mitigated to ensure a satisfactory level of environmental performance.*

The modified proposal does not impact the original assessment completed for the site with the associated conditions still applicable to the site and associated works.

(g) *the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,*

**Comment:** Appropriate sediment and erosion control measures will be installed during construction to ensure the loss of soil from the site is minimised and reduce the potential impacts on the water catchment.

(h) *any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

**Comment:** No other specific measures proposed apart from standard sedimentation and erosion controls that will be embodied within a future Construction Management Plan (CMP) forming part of the Subdivision Works Certificate application. The CMP will also address dust and noise.

#### **Clause 7.10 – Essential Services**

**Comment:** As reflected in the Engineering Report (**Attachment 3**) there is sufficient capacity in the existing sewerage system and water supply system to provide services to the proposed lots.

#### Water

Existing council watermains are located within Terranora Road and Winchelsea way. A 200m diameter watermain exists in Terranora Road and 100mm diameter main exists in Winchelsea way. An existing 150mm diameter main also exists within the road reserve of Sunnycrest Drive to the west.

Development resulting from the proposed subdivision and associated modification will require a new watermain to service future lots. It is proposed to extend a new main from Winchelsea Way through the site to service the proposed development area and subdivision.

No additional demand on the system is proposed.

### Sewer

Gravity sewer exists within Lot 1 on DP 595863 grading from west to east via a 150mm diameter Council main. Development approval for 15 rural residential lots has previously been approved under State planning approval DIPNR DA242-10-2004 for the proposed lots allowing connection for the proposed drainage to Council sewer.

The proposed modification will require reconfiguration of the proposed sewer system. The proposed system will still be in keeping with the approval, the subdivision will be serviced by a combination of gravity sewer and pressure sewer. Sketch 14059-SK206 outlines the concept sewer arrangement to provide a council service for the modified layout.

No additional demand on the system is proposed.

Reference is made to the Civil Engineering Report provided at **Attachment 3** of this report in respect to the location of existing services.

### Stormwater

The existing site is rolling hills with defined gullies and ridges generally sloping from south to north. Levels within the proposed subdivision footprint range from RL 140.0m AHD to RL 122.0m AHD. Natural existing gullies form the current discharge locations from the site and are catered for within adjacent properties via culverts and existing drainage channels. An existing dam is located on Lot 1 DP 595863 which discharges to an adjacent culvert and drain on the boundary of Lot 1 DP 807182 and Lot 2 DP 819065 when overtopping occurs.

The concept drainage for the development, consisting of pit and piped drainage system for the proposed driveway to discharge to the existing on-site dam for catchments along the western edge of the site within Lot 1 DP 595863, remains unchanged.

Discharge water quality is subject to compliance with the requirements of the "Tweed Urban Stormwater Management Plan" and the requirements of Appendix E "D7 Stormwater Quality".

No changes to the stormwater concepts previously approved are proposed.

### Telecommunications/Electricity

Essential Energy and Telecom domestic services are underground and overhead reticulation which run in Terranora Road and Winchelsea way. An easement for Telstra / NBN exists on site within proposed developed Lots 2, 3 and 4.

### Tweed Development Control Plan 2008

The Tweed Development Control Plan (DCP) applies to the Tweed Shire Council Local Government Area (LGA) and as such the subject site. The provisions contained within the DCP are intended to form a guideline under which development can take place that meet the underlying objectives of the Tweed Local Environmental Plan. Where demonstrated, scope exists to allow meritorious assessment through alternate solutions where practicable. The following table summarises which chapters are applicable to the current application.

Reference is made to this proposal seeking to undertake an amendment to the subdivision layout and inclusion of a further allotment. Accordingly, an assessment under Section A5 is considered necessary in this instance. The balance of the original assessment against the remaining applicable Sections are not triggered when regard is made to the nature of the proposal.

**Table 4: Tweed Development Control Plan 2008 Applicability**

Tweed Development Control Plan		Applicable
<u>Section A</u>		
A1	Residential and tourist development	<input type="checkbox"/>
A2	Site access and parking	<input type="checkbox"/>
A3	Development of flood liable land	<input type="checkbox"/>
A4	Advertising signs	<input type="checkbox"/>
<b>A5</b>	<b>Subdivision</b>	<input checked="" type="checkbox"/>
A6	Biting midge and mosquito control	<input type="checkbox"/>
A7	Child care centres	<input type="checkbox"/>
A8	Brothels	<input type="checkbox"/>
A9	Energy smart homes	<input type="checkbox"/>
A10	Exempt and complying development	<input type="checkbox"/>
A11	(Repealed)	<input type="checkbox"/>
A12	(Repealed)	<input type="checkbox"/>
A13	Socio-economic impact assessment	<input type="checkbox"/>
A14	(Repealed)	<input type="checkbox"/>
A15	Waste minimization and management	<input type="checkbox"/>
A16	Preservation of trees or vegetation	<input type="checkbox"/>
A17	Business, enterprise corridor and general industrial zones	<input type="checkbox"/>
A18	Heritage	<input type="checkbox"/>
A19	Biodiversity and habitat management	<input type="checkbox"/>
<u>Section B</u>		
B1	Terranora	<input type="checkbox"/>
B2	Tweed City Centre	<input type="checkbox"/>
B3	Banora Point – Tweed Heads South	<input type="checkbox"/>
B4	West Kingscliff	<input type="checkbox"/>
B5	Casuarina Beach	<input type="checkbox"/>
B6	Murwillumbah West	<input type="checkbox"/>
B7	(Repealed)	<input type="checkbox"/>
B8	Keith Compton Drive	<input type="checkbox"/>

Tweed Development Control Plan		Applicable
B9	Tweed Coast Strategy	<input type="checkbox"/>
B10	Koala Beach	<input type="checkbox"/>
B11	(Repealed)	<input type="checkbox"/>
B12	Fraser Drive, Banora Point	<input type="checkbox"/>
B13	Marana Park Estate Density Controls	<input type="checkbox"/>
B14	Peter Street (South) Residential Development Controls	<input type="checkbox"/>
B15	Seabreeze Estate (Pottsville)	<input type="checkbox"/>
B16	(Repealed)	<input type="checkbox"/>
B17	Planning Controls – Friday Island, Bogangar	<input type="checkbox"/>
B18	(Repealed)	<input type="checkbox"/>
B19	Bogangar/Cabarita Beach Locality Plan	<input type="checkbox"/>
B20	Uki Village	<input type="checkbox"/>
B21	Pottsville Locality Based Development Code	<input type="checkbox"/>
B22	Murwillumbah Town Centre	<input type="checkbox"/>
B23	Hastings Point	<input type="checkbox"/>
B24	Area E Urban Release Development Code	<input type="checkbox"/>
B25	Coastal Hazards	<input type="checkbox"/>
B26	Kingscliff	<input type="checkbox"/>
B27	Marana Street Bilambil Heights	<input type="checkbox"/>
B28	Club Banora	<input type="checkbox"/>

## Section A5 Subdivision

### Section 5.3.4 – Subdivision Design

As reflected elsewhere in this Modification Report and Attachments, detailed investigations have been carried out to identify the site’s opportunities and constraints. In particular, **Plates 2** and **3** provide site details including contours, topography, services, trees and adjacent land information.

The civil design plans for the amended layout are provided within Appendix B of the Engineering Services Report provided in **Attachment 3** of this report.

The modified layout accompanying this application reflects the outcomes of the previously completed site investigations and analysis and achieves a sound balance between the site’s opportunities and constraints.

### Section 5.4 – Urban Design Guidelines and Development Standards

As reflected in the Application Plans and in this Modification report the proposal constitutes “infill development” on a relatively small site where the development potential of the land is significantly constrained by existing land zoning and physical factors.

In accordance with Section 5.4.3 of the plan, the proposal is therefore exempt from the detailed provisions of Chapter 5, however the key guidelines in Section 5.4.1 are nevertheless addressed elsewhere in this Report and Attachments.

### Section 6.3.3 – Subdivision Information Statement

The Modification Report and Attachments address all relevant matters contained in Section 6.3.3 of

the Development Control Plan and demonstrate that the proposal substantially complies with relevant requirements or alternatively the variations are justified in the circumstances as they achieve sound environmental outcomes and are consistent with the objectives of the Development Control Plan.

### **Tweed Local Strategic Planning Statement**

The Tweed Local Strategic Planning Statement (LSPS) sets out the 20-year vision for land-use planning in the Tweed LGA. Commentary and actions within the LSPS relevant to large lot residential development is limited, however Action 17.2 specifies as follows:

*17.2 Ensure that planning for large lot residential settlements takes into account the natural and physical constraints and opportunities of the land to minimise rural land fragmentation and rural land-use conflicts between residential and other rural land-uses.*

The site can be efficiently serviced, as illustrated within the Civil Engineering Report prepared by Cozens Regan Group Pty Ltd and contained within **Attachment 3** of this Modification Application. The subject site is also within close proximity to basic services and transport. The site immediately adjoins other large lot residential land and is bordered by vegetation to the south, east and southwest, thereby providing a suitable buffer to sensitive environmental land.

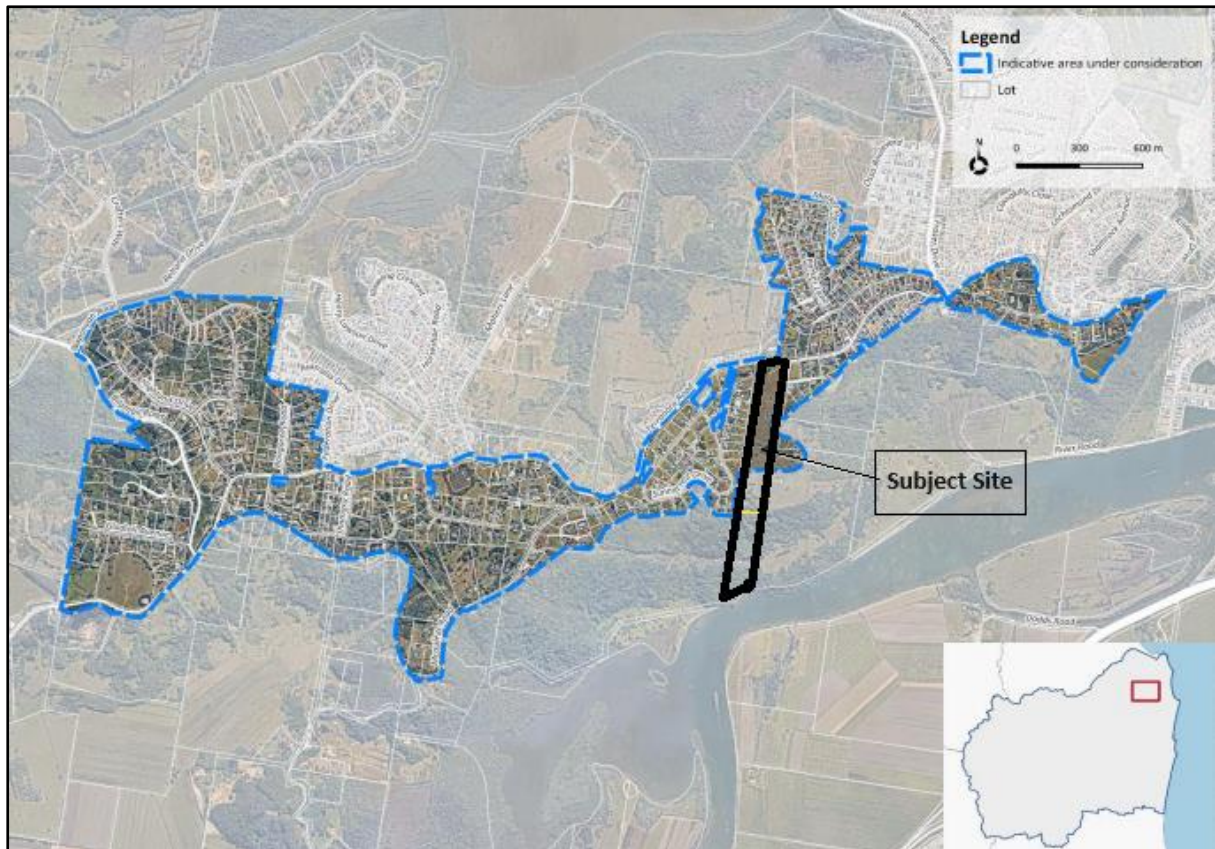
Considering the above, the proposal to facilitate large lot residential development is consistent with the abovementioned action and upholds the intent of the Tweed LSPS.

### **Tweed Growth Management & Housing Strategy (Draft Options Paper)**

The Tweed Growth Management and Housing Strategy (GMHS) provides a framework for managing housing and employment growth over the next 20 years. The GMHS identifies the need to accommodate up to an additional 31,282 persons between 2021-2041. As a consequence, the GMHS sets out planning principles and policy goals that facilitate this anticipated growth, including providing for additional housing opportunities within both infill and greenfield areas, whilst recognising the importance of protecting and respecting the natural environment, landscape, as well as the unique lifestyle and character of the Tweed.

The GMHS outlines over 80 changes which address ten (10) key themes related to the identified growth aspirations and challenges for the Tweed.

Of relevance to large lot residential housing is Change No. 22 which identifies the investigation into the opportunity to reduce Minimum Lot Size in R5 Large Lot Residential in certain locations. In this instance, Terranora is a mapped area where this change is to be investigated, as illustrated in **Plate 10**. This Planning Proposal seeks to apply a minimum lot size which applies under the current Tweed LEP 2014 and as such will not directly conflict with the future investigation under the GMHS.



**Plate 10: Growth Management and Housing Strategy (Change No. 22)**

### **Tweed Community Strategic Plan (CSP) 2022-2032**

The Tweed Community Strategic Plan 2022/2032 (CSP) was prepared based on extensive community consultation and provides the overarching framework and vision for the Tweed for the next 10 years.

A key direction under the Tweed Strategic Plan is the provision of housing that will contribute to housing diversity, lifestyle choice, particularly eco-led lifestyle opportunities, and affordability within the Shire.

No specific service streams, sub-streams, goals, targets or strategies have been identified of relevance to this Planning Proposal, nor any inconsistencies within the Community Strategic Plan 2022-2032.

### **State & Regional Plans**

#### **North Coast Regional Plan 2041**

The focus goals under the Regional Plan which are directly applicable to this Modification are:

- Goal 1: Liveable, sustainable and resilient,
- Goal 2: Productive and connected,
- Goal 3: Growth, changes and opportunity

#### **Goal 1. Liveable, sustainable and resilient**

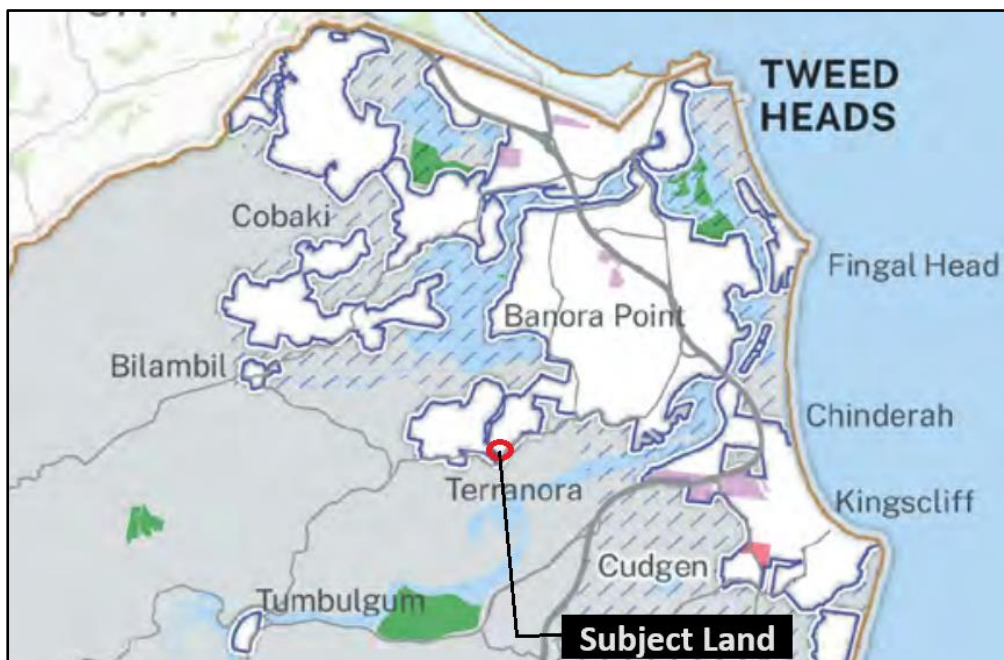
The Regional Plan identifies Objectives to support the delivery of Goal 1, including:

- Provide well located homes to meet demand

- Protect regional biodiversity and areas of high environmental value
- Management and improve resilience to shocks and stresses, natural hazards and climate change.

This proposal ensures the amended subdivision layout with associated dwelling entitlements, protect areas of high environmental value and leverage the site’s limited exposure to mapped hazards. In this regard, the land is located within the urban mapped area:

- The proposal is considered to be consistent with the objectives and outcomes in the North Coast Regional Plan 2041 and applicable Ministerial Directions.
- This proposal does not require any change to committed and planned infrastructure for the immediate locality.
- Avoids areas of high environmental value.
- The amended layout avoids risk by being confined to flood-free areas of the site and where bushfire threat can be comfortably accommodated, as demonstrated in **Attachment 5** of this report.
- This proposal relates to land located outside of the coastal strip.
- This proposal does not introduce land use conflict or sensitive receivers to existing development given the intended land zoning and residential use is commensurate to the adjoining large lot residential areas.
- This proposal does not involve State Significant Farmland.
- Retaining the subdivision above contour 110m – 120m AHD and retaining the subtropical rainforest results in the modified layout not reducing green breaks and character in the area.



**Plate 11: NCREP Growth Management and Housing Strategy (Change No. 22)**

Ultimately, future development of the site is considered to possess opportunity to contribute to the site’s environmental qualities through rehabilitation, improvements and active site management through the C2 zoned land being contained within the neighbourhood lot.

### Goal 2. Productive and connected

The amended subdivision layout would preserve new housing opportunities while not impacting on wider agricultural or economic practices or infrastructure services.

This proposal is considered to be consistent with Goal 2 of the NCRP.

### Goal 3: Growth, change and opportunity

Residential development on the subject site creates new housing opportunities and supports the subregional planning principles, urban design and function of regional cities (which Tweed is nominated under the NCRP), as identified within Goal 3.

This proposal is considered to be consistent with Goal 3 of the NCRP.

### Local Government Narratives – Tweed

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

This proposal will create new opportunities for housing in the Terranora area.

This proposal is considered to be consistent with the NCRP, achieving consistency with the majority of the directions and actions, and where inconsistencies have been identified, supporting justification is appropriately outlined.

### State Environmental Planning Policies

State Environmental Planning Policies (SEPPs) deal with matters of State or Regional environmental planning significance. They are made by the Governor on the recommendation of the Minister for Planning and may be exhibited in draft form for public comment before being published as a legal document.

**Table 5: SEPP Applicability**

State Environmental Planning Policy (SEPP)	Applicable
<b>SEPP (Biodiversity and Conservation) 2021</b>	<input checked="" type="checkbox"/>
<b>SEPP (Sustainable Buildings) 2022</b>	<input checked="" type="checkbox"/>
SEPP (Exempt and Complying Development Codes) 2008	<input type="checkbox"/>
SEPP (Housing) 2021	<input type="checkbox"/>
SEPP (Industry and Employment) 2021	<input type="checkbox"/>
SEPP No.65 – Design Quality of Residential Apartment Development	<input type="checkbox"/>
<b>SEPP (Planning Systems) 2021</b>	<input checked="" type="checkbox"/>
SEPP (Precincts – Central River City) 2021	<input type="checkbox"/>
SEPP (Precincts – Eastern Harbour City) 2021	<input type="checkbox"/>
SEPP (Precincts – Regional) 2021	<input type="checkbox"/>
SEPP (Precincts – Western Parkland City) 2021	<input type="checkbox"/>
SEPP (Primary Production) 2021	<input type="checkbox"/>
<b>SEPP (Resilience and Hazards) 2021</b>	<input checked="" type="checkbox"/>
<b>SEPP (Transport and Infrastructure) 2021</b>	<input checked="" type="checkbox"/>

### SEPP (Biodiversity and Conservation) 2021

#### Chapter 4 Koala Habitat Protection 2021

The aim of this Policy is to protect the biodiversity values of trees and other vegetation and to preserve the amenity of the area.

The land is not zoned as rural and as such Chapter 4 Koala Habitat Protection 2021 applies to the site. Pursuant to Section 4.8 of the SEPP, the Department's determination of the Modification Application must be consistent with the approved KPoM that applies to the land. In this regard, the land falls within the Tweed Coast and as such the proposal must be assessed under the Tweed Coast CKPoM.

Biodiversity Australia, within their advice contained within **Attachment 4** of this proposal, have not identified Koala records, food trees or habitat present within the area planned for the amended layout.

Accordingly, Biodiversity Australia conclude it is unlikely that there will be any impacts on Koalas and as such a Koala Management Plan is not required.

No further Koala habitat testing is considered necessary as part of this proposed Modification and the proposal does not include any inconsistencies with the Koala Habitat SEPP provisions.

### SEPP (Planning Systems) 2021

SEPP (State & Regional Development) 2011 applies to the state of NSW. The SEPP identifies development that is considered either State Significant or Regional Development. The proposal is not considered State Significant Development or State Significant infrastructure.

Communication prior to lodgement of this application with the Department of Planning, Housing and Infrastructure (DPHI) has identified the application is required to be lodged with DPHI for determination.

### SEPP (Sustainable Buildings) 2022

The aim of this Policy is to encourage the design and delivery of sustainable buildings. The future Development Applications for dwelling houses on each proposed lot will include a BASIX Certificate ensuring that the dwelling minimises the consumption of energy.

### SEPP (Transport & Infrastructure) 2021

#### Division 17 Roads & Traffic

Pursuant to S2.122, the development is not considered to be a 'traffic generating development' for the purposes of the SEPP.

### SEPP (Resilience and Hazards) 2021

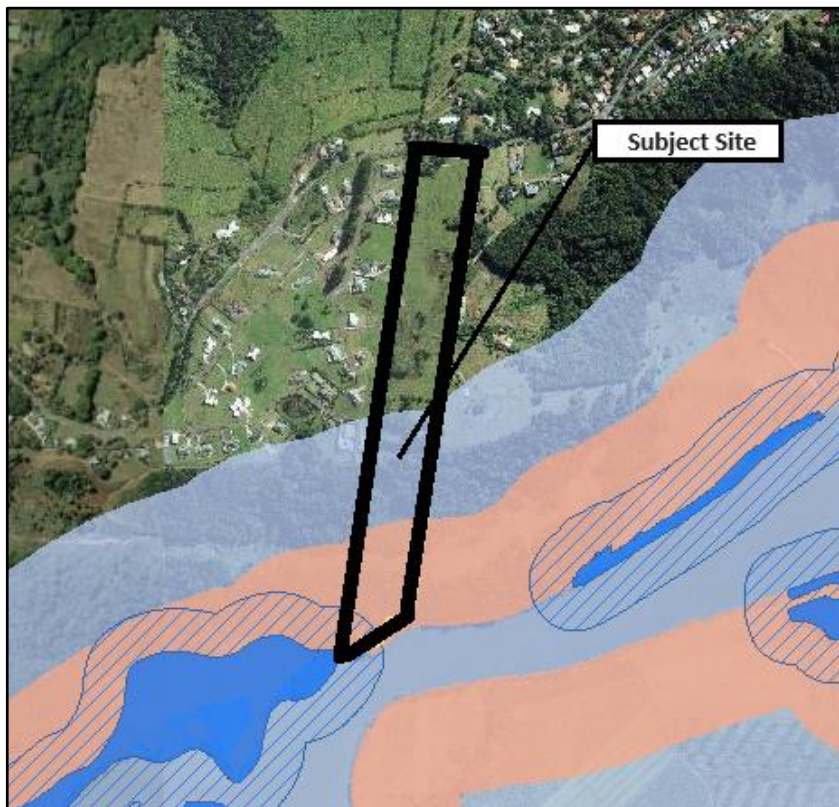
#### Chapter 2 – Coastal Management

The aim of this Policy is to manage development in the coastal zone and protect the environmental assets of the coast, through a planning framework which promotes the objects of the Coastal Management Act 2016.

The 'coastal zone' is defined as being the area of land comprising one or more of the following coastal management areas:

- coastal wetlands and littoral rainforest area.
- coastal vulnerability area.
- coastal environment area; and
- coastal use area.

As illustrated within **Plate 12**, the development site is mapped as being located within the 'Coastal Use Area', 'Coastal Environment Area' and 'Coastal Wetlands Proximity Area'.



**Plate 12: Coastal Wetlands and Littoral Rainforests Areas Map**

Based on the mapping layers, Divisions 1, 3 and 4 within this Chapter of the SEPP are applicable to the proposed development. Despite the amended layout not being located within the mapped areas, the following comments are made with respect to the aforementioned provisions:

- (a) **Foreshore Access** – The subject site, whilst fronting the Tweed River does not incorporate physical works being proposed within the foreshore area, as part of this proposal. Accordingly, the application does not present opportunities to improve pedestrian access to the foreshore area.
- (b) **Relationship to Surrounding Area** – The surrounding and nearby land uses consist of large lot residential properties and rural holdings. The proposal to permit an amended layout for residential housing in a designated portion of the subject site is considered to be consistent with the land uses in the nearby locality.

- (c) **Impact on Amenity of Foreshore** – The subject site does not provide public foreshore access, whilst this proposal does not seek to develop the foreshore area for residential housing. Accordingly the proposed land use will not adversely impact on the amenity of the foreshore area.
- (d) **Visual Amenity and Scenic Qualities** – The subject land has a number of viewsheds applicable, therefore the site has scenic qualities as is clearly identified within the assessment for Planning Proposal (PP16/0002). The current application limits development to the R5 zone boundary consistent with the original approval for the site. Accordingly, the proposal does not modify the visual impact in regard to the number of dwellings visible. Any future dwelling will be carefully designed and positioned to maintain local viewsheds.
- (e) **Conservation of Biodiversity and Ecosystems** – The development standards proposed reflect the existing heights and density of the adjoining rural residential land and therefore would not detract away from the scenic qualities or character of the area.
- (f) **Cumulative Impact** – The footprint of the amended layout is within the confines of the approved subdivision. An Ecological Assessment of the vegetation onsite has determined that development can be appropriately accommodated onsite without detrimentally impacting the surrounding vegetation.
- (g) **Protect Aboriginal Cultural Heritage** – The site is mapped as an Aboriginal Place of Heritage Significance and Predictive Aboriginal Cultural Heritage. For the purposes of Planning Proposal 16/0002, a Cultural Heritage Assessment was completed by Everick Heritage Consultants Pty Ltd for the Planning Proposal for the balance of the land (refer **Attachment 8**). The assessment completed by Everick Heritage Consultants Pty Ltd (as a result of the desktop study and field inspection with the Tweed Byon Local Aboriginal Land Council) reached the following conclusions.
- No Indigenous cultural heritage sites or relics were identified within the project area
  - No areas have been identified that are considered to contain potential archaeological deposits of significant Aboriginal heritage
  - All of the project area has been disturbed in a manner which constitutes ‘disturbance’ within the meaning of the Due Diligence Code and is consistent with the Due Diligence Code.

In respect to Division 1, only a small portion of the site in the south western corner is mapped as ‘proximity to wetlands’. It is considered that development for the purposes of a dwelling house could not occur on this land area.

In respect to Division 5, Clause 2.12, Development in the coastal zone generally, the proposal is not likely to cause an increased risk of coastal hazards on the subject or adjoining sites.

In respect to Division 5, Clause 2.13, there are no certified coastal management programs applying to the site.

#### **Chapter 4 – Remediation of Land**

The objective of Chapter 4 – Remediation of Land, is to promote the remediation of contaminated land for the purpose of reducing risk of harm to human health or any other aspect of the environment.

Clause 4.6 of the SEPP relates to contamination and remediation that should be considered in determining a Development Application. A consent authority must firstly consider whether a site is contaminated.

If the land is contaminated, the consent authority must be satisfied that the land is suitable in its contaminated state, or it will be suitable after remediation, for the proposed development.

A Contamination Report has been provided from 2004 for the earlier subdivision of Lot 1 DP 595863 and Lot 3 DP 819065. This report also informed Planning Proposal 16/0002 and was deemed adequate for the Gateway Determination.

The report provided details of sampling and contamination testing on the site and concluded that the site is appropriate for the proposed use. In this regard the report has been accepted through the determination of DA 242-10-2004.

## 6.0 Conclusion

This proposal seeks to secure the modification to Development Application 242-10-2004 to the approved subdivision layout and conditions of consent upon the R5 Large Lot Residential land area at 4 Winchelsea Way, Terranora (Lot 1 DP 595863).

The modifications sought will allow for the development of a modified subdivision layout to respond to the current Planning for Bushfire Protection Guidelines 2019. The proposal also amends the condition relevant to the intersection treatment for Winchelsea Way and Terranora Road in response to the current traffic assessment.

The proposed modifications will not alter the manner in which the infill subdivision operates in regard to the planned residential use and will not result in any additional adverse impacts to adjacent properties, or to the Terranora area at large. The Development Application, as approved, will therefore remain largely unaffected by the proposed modifications.

The proposed modification is considered to be in the public interest as it will allow for the provision of, and access to, additional housing.

We respectfully seek the Department of Planning, Housing & Infrastructure support for the proposed modification.