

Council Reference: DA09/0466.02 LN71624
Your Reference: MP08_0234 MOD 3



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20 December 2024

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Dear Sir,

MP08_0234 MOD 3 DA09/0466.02 – Modification to approved Concept Plan comprising residential, retirement living, retail, commercial, school and open space precincts at Lot 31 DP 850230; Conmurra Avenue BILAMBIL; Lot 1 DP 1033807 & Lot 1 DP 1033810 & Lot 1 DP 595529 & Lot 2 DP 867486 & Lot 32 DP 1085109 & Lot 33 DP 1085109 & Lot 4 DP 822786; Marana Street BILAMBIL HEIGHTS; Lot 2 DP 555026; No. 147 McAllisters Road BILAMBIL HEIGHTS

Thankyou for the opportunity to provide comment on the proposed amendments to the former “The Rise” development Major Projects approval MP08_0234 Concept Plan - Modification Application (“**MOD 3**”).

Pursuant to SEPP (Major Projects) 2005 (which is now repealed and replaced by SEPP (Precincts) 2021), it is understood that the subject site was gazetted as a State Significant Site in June 2010 and the Concept Plan was consented to by the Minister of Planning shortly after.

The Concept Plan (“MP08_0234”), as originally approved, facilitated a mixed residential development comprising of:

- 1604 residential dwellings;
- A Village Centre comprising of:
 - 5300sqm commercial GFA and
 - 4447sqm retail GFA;
- 38.8Ha of conservation land and open space;
- A 200 bed nursing home;
- Community facilities;
- A private school precinct and;
- Ancillary infrastructure.

The development was approved as a Community Title subdivision, meaning that assets and infrastructure within the development site would be managed and maintained via a body corporate.

Pursuant to Section 75W of the Environmental Planning & Assessment Act 1979 (“**the Act**”) the subject MOD 3 has been prepared by RPS on behalf of Greenland Development Pty Ltd, (“**the applicant**”) for consideration by the Department of Planning, Housing and Infrastructure (“**DPHI**”) and seeks to modify the approved Concept Plan to provide the following:

- 1300 residential dwellings;
- 4250 commercial GFA;
- 2400 retail GFA;
- 51.44Ha open space and conservation land;

- Deletion of private school;
- Deletion of 200 bed capacity nursing home and;
- Increase in overall land area from 122.77Ha to 124.49Ha.

The Rise Concept Plan was declared a state significant site due to its statewide significance as a precinct based development that aimed to provide for the housing needs of the community via the provision of a variety of housing types and densities and enable other land uses that provide facilities or services to meet the day to day needs of those residents (not limited to but including community facilities, a school, a strong and vibrant Village Centre and a vast range of housing types with yields that were conducive to the overall distribution of land use zoning and the respective uses nominated in the Concept Plan). For the reasons outlined in [Items 3-22](#) of this submission, the proposed modifications fail to meet the anticipated planning outcomes in the original approval as far as enabling a precinct to emerge and flourish within itself. Rather, the proposal reflects a predominantly residential land use application with a loss of compatible zones and land uses to provide facilities to support the social and economic needs of that community (and beyond).

Whilst Council fundamentally supports the provision of greenfield development in this locality and acknowledges that the project planning for such has been ongoing for some time now, the mechanism in which the proposed changes are being sought is considered to be flawed. It is considered that the cumulation of the extent of changes being made to the proposal, the level of ongoing consultation that would be required in order to achieve an acceptable outcome for Council to agree to accept dedicated land, coupled with a limited assessment pathway (under Section 4.55(2) of the Act to ensure that the development meets the needs of the future population in this locality (in terms of infrastructure servicing and land use allocation to enable a built form that delivers social cohesion and sustainable greenfield development outcomes in this region (which will also benefit from the development which will occur at this key site)) is impractical as a “modification application” to the approved concept, given the drastic amendments being proposed.

As such, as set out hereafter, it is considered that the proposed modifications will result in development which is not ‘substantially the same’. Therefore, Council requests the Minister reject the application as the proposal warrants a new application to be made to DPHI.

It is considered that a new application would enable proper consultation and a contemporary assessment of the proposal having regard to the suite of opportunities and constraints that relate to the site (in its current form) and current “best practice” approaches to the development of land in the scenario of a Torrens Title subdivision. This is particularly the case when considering the extent of land to be dedicated to Council, which is a new component of development at this location, and otherwise never considered by Council in the consultation phase of the original assessment.

In addition to the above key consideration, as demonstrated in Item 1 of this submission, there are numerous other qualitative and quantitative considerations that, in Councils opinion, prevent the amended proposal from being approved under a modification application having regard to the limitations in Section 4.55(2) of the Act.

Should the Minister be of the opinion that the extent of proposed modifications is ‘substantially the same’, Council nevertheless objects to the proposal in its current form on the basis that the application is incoherent in terms of the documentation and plans being consistent with each other and does not demonstrate that related environmental impacts have been addressed, specifically those listed below:

- Land tenure and the proposed dedication of land for biodiversity conservation and open space despite being affected by flooding, subject to proposed drainage reserves or

forming conservation areas and the burden of such on the public (due to the low usability of this land and maintenance burden on Council);

- An appropriate mechanism to offset the loss of Local & Structured Open Space at the north eastern aspect of Lot 2 DP86748 (adjacent to Cobaki Road and Robinsons Road) having regard to the matters raised in [Item 23](#) (in relation to the high flow flood classification of this land) and [Item 25](#) (the impact of accepting the dedication of this land as public infrastructure) of this submission;

The likely impacts resulting from traffic generation based on revised composition of land uses and usability of such land uses within the development site based on projected trip yields in the original DA (and conditions of consent to this effect);

- As detailed throughout this submission, the proposed allocation and yields associated with the land uses radically transforms the manner in which the development will operate and no longer forms a sustainable greenfield development (refer to further explanation in Items [3 -21](#) of this submission);
- The proposed consolidation of the previously approved two (2) reservoirs fails to deliver the required amount of land to cater for the infrastructure at this location (noting the proposed area of land to be dedicated is not large enough and the terrain that surrounds this area is not appropriate for access and maintenance of Councils water reservoir infrastructure). As such, this aspect of the proposal is significant as the subject site cannot be adequately serviced in terms of water supply. Any further modification to the Concept Plan to accommodate Councils requirements (as the Water Authority) will likely result in a drastic change to the layout of the Concept Plan;
- The social and economic impacts resulting from reduced commercial and retail GFA which is not commensurate to the likely future population resulting from the anticipated residential lot yields;
- The social impacts resulting from the loss of the approved school site and the lack of information to support the claim that this aspect of the proposal is not an essential feature of the development (based on the supply and demand of non-state education in the area);
- The safety issues resulting from up to 50 residential lots accessing the proposed Spine Road which is currently designed to have up to 16% slope and likely speeds 60 km/h - 70km/h (such access arrangement did not form part of the approved Concept Plan);
- The safety issues resulting from inadequate Asset Protection Zones (“**APZ’s**”) for bushfire protection;
- The biodiversity impacts as a result of the extent of vegetation removal and inadequate compensation/rehabilitation areas and appropriate ecological buffers.

In relation to other changes to the plan(s) and documentation, Council notes that additional information is needed in a number of areas to enable a thorough assessment of the proposal.

To this end, it is generally noted that in many cases, the submitted Engineering detail, Concept Plan Layout and Urban Design Report fails to be consistent with each other and therefore a proper assessment of the relevant matters for consideration is challenging in the short amount of time that is provided for the exhibition period with the proposed modification. This is particularly the case when considering matters such as (but not limited to); the delivery of recreational open space vs. conservation land (which has implications in quantifying the

delivery of required open space based on the likely population); the provision of cycle paths in locations where there is retaining walls proposed; the provision of the carpark in the biodiversity land to the south; the proposed road location and design; and connection points to adjoining development lots.

It is recommended that DPHI raise this issue with proponent and a suite of coherent plans be submitted to DPHI for consideration under either a new application or should DPHI consider the proposal to satisfy the 'substantially the same development' test, an amended modification application. It is further requested that any amended modification application be re-exhibited, and Council be provided ample opportunity for comment.

In addition to the above, fundamental planning related comments (as it applies to Council as the future consent authority for DA's and the recipient of dedicated land) based on the proposed modifications are summarised below.

Statutory considerations pursuant to section 4.55(2)(a) of the Environmental Planning and Assessment Act 1979

1. Council has considered the proposed modifications and is not satisfied that the proposal has the same material and essential essence based on the comparative analysis of the before and after, which is a key consideration pursuant to Section 4.55(2)(a) of the Act.

The main aspects of Council concerns having regard to "substantially the same development" are detailed below.

- a) The submitted application comprises of significant variations to the NSW Director-General's Environmental Assessment Report (May 2010) ("**NSW DG EAR 2010**") which identifies the conditions on which the Concept Plan was approved, noting that the proposal comprises of an increased number of threatened plant species proposed to be removed compared to the original Concept Plan and is inconsistent with the approved area of rehabilitation and revegetation.

To this end, the submitted bushfire report is based on existing vegetation only and thus does not consider the proposed regeneration / revegetation that is required to meet the DG EAR 2010 approval (see [Item 28 and Item 29](#) discussed later in this submission). This may result in one or both of these elements being unachievable which, consequently, would increase the risk to any existing or proposed development and likely, radically change the outcomes of the proposal in terms of the concept layout.

In any case, if the proposal is considered in its current form, the effect of the proposed modification having regard to the NSW DG EAR 2010 will result in potential irreversible impact to biodiversity values. The provision of biodiversity conservation is considered to be an "*essential physical aspect of the approved development*" (*Moto Projects No. 2 vs North Sydney Council (1996) 106 LGERA290*) ("**Moto Projects Case**"). This issue contributes to Councils view that the approved development and proposed modified development are not substantially the same.

- b) The submitted application includes the provision of an overall increase in open space and conservation areas in a scenario where the proposed land tenure will not deliver the same mechanism to manage such land which, consequently, will result in a ream of considerations by Council as the recipient of dedicated land and road reserve that had otherwise not formed merit considerations under the original application. The consequential loss of appropriate land management mechanisms in this scenario will result in potential biodiversity impacts (due to ineffectively managed conservation and rehabilitation areas), increased bushfire risk to future dwellings and poorly maintained

roads and associated retaining walls (up to 6m in height). These consequential outcomes are ‘*a material and essential physical aspect of the approved development*’ and therefore the two developments will not be substantially same (“Moto Projects Case”).

To this end, it is acknowledged that there is caselaw to support a change to land tenure in a very small scale subdivision under Section 4.55 Modification application (see *Archidrome Pty Ltd v Blacktown City Council [2023] NSWLEC 1393*) (“**Archidrome**”). In this matter, the Court ordered that the applicants appeal was upheld regarding the provision of land tenure change from Community Title to Torrens Title being consented to under Section 4.55 of the Act. The Archidrome matter related to the construction of 50 two-storey dwellings, a 53-lot subdivision, civil and drainage works, and the construction of community title lots, private roads and public roads.

Having regard to the overall scale of the subdivision and the affectations of the land to which the subject Major Projects consent related to, the Archidrome matter, is not considered to be comparable to the subject development and the consequential material outcomes that are changing as a result of the proposed modification.

To elaborate further, the Section 4.55 application sought to modify the consent by changing the onsite detention design, making a minor change to the setback of one lot, changing the size of one lot and incorporating a building envelope plan, and replacing the community title lots with Torrens title lots. The decision in the judgement states that “*that the essential elements of the subdivision, road and dwelling design remain, and the physical changes relate to only matters of detail concerning peripheral aspects of the proposed development. The changes will not have any impact on the natural and built environment of the locality*”. This position is well founded given that residential lot yield and dwelling design remained unchanged, the road design did not change, and the scale of the development was essentially and materially the same (whereas, as discussed later, the proposed modification seeks to drastically change the distribution of land uses, not limited to but including residential lot yield, and includes the loss of internal services and infrastructure to support its future population). In addition, the Archidrome matter was of a scale that it did not include any open space, conservation land, reservoir land for water supply and provision of retaining walls impeding access to land that needs to be managed by Council as a result of the modifications proposed, which is the circumstance of this case.

- c) The reduced retail and commercial GFA is not commensurate to the proposed dwelling yield. This, combined with the loss of the approved school precinct and reduced ability to deliver an appropriate quantity and range of supporting services such as childcare, medical centres and opportunity for food supplies is not in line with sustainable greenfield development principles by way of providing a walkable village centre and adequate opportunity for employment and education within the development site itself. All of these matters are essential and physical aspects of the approved greenfield development at the subject site, and more broadly, in NSW. Furthermore, these aspects of the proposal will have an impact for the surrounding region having regard to the demographic analysis provided later in this submission, and the likely future development of adjoining lots, which will also feed into the population likely to utilise the village centre as a “walkable centre”.
- d) The road locations and associated road hierarchy and land uses at the south east of the site is radically different to that originally approved and there is a loss of essential and physical aspects of the approved development having regard to the approved location of the Spine Road and the provision for a direct connection to the approved Spine Road from adjoining lands. In this regard, Condition B4(1) on the consent anticipated this connection with a need to provide interim connection until the Spine

Road is completed. The current layout of the plan fails to acknowledge this connection (which is also anticipated in Control C3 Section 3.2 of Tweed DCP 2008 (B27) and was a condition of providing owners consent to this modification application (see [Items 65-66](#) and [Item 79](#) in this submission).

In addition to the above matters, as it relates to the road layout and hierarchy, it is noted that the approved alignment of the Spine Road would have secured adequate provision for APZ's for the residential land directly north of the expansive area of biodiversity land to the south. Comparatively, the proposed perimeter "esplanade" road fails to perform to the same standard, which gives rise to a ream of concerns in relation to the likely performance solution and loss of on street parking to satisfy the required width of this road. As such, not only does this result in a loss in material and essential physical aspects of the approved development, but it will also have adverse impacts on the overall function of the road hierarchy, the provision of on street parking which would undoubtedly be required based on the distribution of residential lots in this location, coupled with required performance solutions to satisfy bushfire requirements in terms of achieving the required APZ's.

2. The matters raised in Item 1(a), (b) and (c) above will require a radical transformation of the existing consent to ensure that the delivery of infrastructure is adequate having regard to Council standards as compared to a scenario where the infrastructure was to be maintained in a Community Title arrangement and would not be burdened upon Council for ongoing land management.

The current format of the consent is such that it will need to be significantly modified to accommodate additional conditions of consent. To this end, it is recommended that if DPHI is inclined to support the proposal (after considering all the matters raised in this letter), the DPHI further liaise with Council in relation to the timing of infrastructure and staging of the development in accordance with amended plans and additional information as required by [Items 88 & 88](#) (Staging) in this submission.

Strategic land use planning & demographic needs analysis/social impact

Reduced residential lot yield & housing diversity

3. Concerns are raised over the under supply of housing stock compared to the original approved lot yield and housing diversity. At a time when the Tweed is in a housing crisis and has limited infrastructure elsewhere to support the population growth occurring in the region, solid justification for a reduction in yields is required, along with consideration of why increased densities in key locations is not possible to compensate for losses and delivery the required level of diversity to meet the housing needs and affordability.

While the Tweed contains a number of greenfield sites, progression of these areas to ensure commencements, has been grossly behind expectations and at significant cost to Council and the community.

4. As mentioned in [Item 3](#) above, the proposed modification no longer demonstrates a strong diverse housing choice and therefore does not align with the State Government or Council's strategic position on housing in the Tweed. Specifically, the North Coast Regional Plan and the Tweed Growth Management and Housing Strategy ("**GMHS**") which both have principles and priorities for housing diversity "*consisting of a mix of allotment sizes, typologies and dwelling densities*" (GMHS Options Paper 2024).

The submitted Residential Product in the Modification Report (“**Mod Report**”) has altered the product mix from “*hillside housing lots, hotel apartments, penthouses, apartments, villas and townhouses, art shop houses / soho units, retirement cottages, retirement apartments, retirement villas and nursing home*” to majority detached residential allotments with a small allotment of townhouse/attached housing in the village centre.

Page 12 of the submitted Mod Report states that this change in product mix is partly “*in response to the market*”. However, there is no evidence of this market position in the project documentation.

5. Section 3.3.2 of the Mod Report states there is a small reduction in residential scale in the Village Centre. The original Precinct Plan had 257 dwellings in the Village Centre. Appendix D ‘Updated Concept Plan Package’, the Product Summary Plan shows potential dwellings with some yield for apartments and town homes. The proposed plans shows 435 dwellings in the Village Centre, however 216 of those are listed under “Hotel/mixed use/apartments”, it is unclear if these dwellings will be short term apartment accommodation, and if so, this further reduces choice for people needing higher density/smaller housing options that meet the affordability needs.
6. By 2041 over a third of the expected population in Bilambil/Bilambil Heights will be in the retiree/pre-retiree service age group. (60+ 24.4%; Older workers/pre-retirees (50-59) 11.8%). p.10 of the Economic Needs Assessment (“**ENA**”), under ‘Age cohorts’ states there is a slightly higher proportion of older residents in the area.

The original Precinct Plan proposed a dwelling yield of 598 for retirement living, plus 200 for aged care. The developer proposes to remove all retirement living from their site and rely on retirement options through the adjacent GemLife site. GemLife have indicated an intent to further reduced the yield from 196 to 179 as per correspondence with Council in January 2024. This is a loss of 419 retirement dwellings in addition to the loss of aged care living from the original Concept Plan.

7. Page 10 of the ENA, under ‘Age cohorts’ states the age profile will be influenced by the new residential development planned onsite, which is expected to increase the proportion of young families in the catchment. There is no data provided in the project documentation to support the assumption of more young families. There is also no evidence in the project documentation to support the position that young families are primarily looking for detached large lot sites to build.
8. 18% of the Bilambil/Bilambil Heights population will be tertiary/independent/young workforce by 2041. There is demand from this demographic, and other smaller families or couples for the smaller housing product category (1-2 bedroom). There is opportunity to meet this demand with a mix of housing typologies, centrally located in proximity to key services such as in or surrounding the proposed Village Centre.

Recommendation:

9. Having regard to the points raised above, should DPHI be of a mind to proceed with the current modification application despite the comments outlined in [Item 1](#) of this submission (alternatively as part of a new application); Council recommends that as per the NSW Social Impact Assessment Guidelines (which states that a Social Impact Assessment is required for an application to modify an approved development under the Act), DPHI request the proponent to undertake a Social Impact Assessment that includes a detailed assessment of the likely impacts resulting from the proposed modification as it relates to housing supply and diversity.

It is recommended that any response to the above requested additional information be provided to Council for further consideration and comment.

Housing affordability

10. Page 11 of the ENA states that “*Elysian Heights is expected to increase the proportion of young families in catchment, as well as improve the income profile of the catchment. This will occur as a result of families attracted to the new housing development onsite, with prices onsite likely to be above the current median house price for the Bilambil Heights local area.*”
11. Council’s Affordable Housing Strategy exhibited earlier this year and adopted by Council on 11 December 2024 highlights the urgent need for affordable housing options particularly in Greenfield locations. The reduction in housing options and shift to primarily low density detached housing in this modification, with a focus on targeting higher income earners is contrary to State Government continuing strategies and planning policy reforms and Council strategic position.

Reduced employment opportunities within the development

12. With an estimated increase in local population of approximately 3,120 people (2.4/dwelling), the composition of a retail centre of only 2,400sqm has not been adequately addressed in the modification application. In particular, given its location, consideration of whether longer term, more wholistic strategic planning is likely to generate a need for greater GFA for both retail and commercial purposes is considered necessary.
13. With more than 9,000 people travelling into South East QLD, daily to work, an increase in population of 3,120 people would equate to the need for an additional 1,269 jobs (40.7%), the majority of which should be located close to homes where possible. At an average of 1 employee per 70 square metres, for a total GFA of retail and commercial of 6,650sqm, the proposed village centre would likely generate employment for approximately 95 persons, resulting in 1,174 people needing to seek employment outside the area, which is an undesirable outcome (this is exacerbated by the limited public transport and road network constraints mentioned elsewhere in this submission).

In this regard, creating employment-generating opportunities close to home is a key aspect of future growth management in the Tweed and more broadly, NSW. Demonstrating how investigations have justified a limited scale of employment land beyond that of the ENA should be undertaken, given that it acknowledges that there is “*little in the way of non-residential land uses or services within Bilambil Heights*”.

The opportunity to establish a boutique employment centre does not appear to have been considered but could present an opportunity for the subject development. The boundary of a catchment might be expected to vary if appropriate employment opportunities were available.

14. Based on the above matters, the proposal fails to deliver a cohesive and sustainable development outcome by way of delivering housing and employment opportunities that are commensurate to each other, as well as appropriate opportunity for private infrastructure (non-government deliverables) to support the future population in the development.

Loss of school site

15. The proposed modification to remove the approved school precinct is inconsistent with North Coast Regional Plan 2041 as far as providing vibrant and engaged communities that are embellished with appropriate planning controls to ensure opportunities are available to allow the delivery of infrastructure that responds to community needs for social participation (not limited to, but including, education).
16. The proposed modification is inconsistent with Tweed Shire Council’s Local Strategic Planning Statement – 2020 which outlines key actions in relation to:

- i. *land use planning and the appropriate location of new education services outside of significant farmland areas;*
 - ii. *the provision of connected and integrated planned growth to provide efficient movement of people to the various nodes of residential, educational, recreation and employment generating development and;*
 - iii. *Appropriate provision for education infrastructure to support planned residential development and projected population growth.*
17. Insufficient information has been provided to demonstrate that the loss of land for the purpose of a school is well founded. In particular, this is a relevant assessment consideration when considering the demographic profile of incoming population in this location, the current level of uptake of non-state schools in the demographic profiles of the area, as well as the low supply of non-state schools in the Shire.
- a. Forecast.id projects an additional 475 school age students, (total of 1,155. 17.1% of the population) in Bilambil/Bilambil Heights by 2041.
 - b. In the Cobaki-Bilambil area, 31% of primary age resident attend a Catholic or Independent School and 46% of secondary age residents (Profile.id).
 - c. Page 4 of the ENA highlights the need - "*There is little in the way of non-residential land uses or services within Bilambil Heights, with only a small-scale local convenience center along Simpson Drive and a public school (kindergarten to year 6) at Bilambil.*"

The ENA (pp.10, 11 & 28) reinforces the focus on bringing in a large cohort of young families to the new development. This position is contrary to page 20-21 of the Mod report on social and economic impacts which states "*Removal of the proposed school and nursing home and reduction in retirement living would not likely create social impacts as there is considered to be insufficient demand for these uses in the area*". No data is provided to demonstrate a lack of demand for the new population of young families targeted for the development.

Recommendation:

18. Based on the above points, Should DPHI be of a mind to proceed with the current modification application, despite the comments outlined in [Item 1](#) of this submission, Council recommends that as per the NSW Social Impact Assessment Guidelines (which states that a Social Impact Assessment is required for an application to modify an approved development under the Act), DPHI request the proponent to undertake a Social Impact Assessment that includes detailed needs analysis on the private education demand, based on the projected growth in school age students to ensure that the future education needs of the proposed community will be met, notwithstanding the deletion of the proposed private school precinct.

The analysis should also respond to Council's Local Strategic Planning Statement (LSPS) 2020 ensuring "*appropriate provision for education infrastructure to support planned residential development and projected population growth.*"

Community and Accessibility: social cohesion and accessibility to community facilities

19. Council's Community Facilities Plan ("**CFP**") recognises a need for community facilities for Bilambil/Bilambil Heights as the population grows. Based on current projections, the area

will require a local community facility within the next 10-15 years. This development will likely bring the population threshold required for a community facility.

20. Council's Developer Contributions Plan for Community Facilities ("CP15") has identified an area incorporating some of the Elysian development footprint for a general use community facility.
21. The original Community Facilities site plan ("CFSP") for Elysian shows a site earmarked for a community facility. The modified CFSP in Appendix D has the former area now marked for residential uses. Page 32 of the ENA states "*The Village Centre is expected to be anchored by a range of key community land uses and services that will support convenience, accessibility, amenity and employment opportunities*". There is no reference to any type of community facility as defined under the Tweed Shire Council Local Environmental Plan 2014 ("LEP") in the CFP. The CFSP is only showing land uses which are defined as recreation areas/facilities in the LEP.

Recommendation:

22. Based on the points raised in [Items 19-21](#) above, should DPHI be of a mind to proceed with the current modification application, despite the comments outlined in [Item 1](#) of this submission, it is recommended that the DPHI request that the proponent provide information on changes in community facility land use/infrastructure from the original CFSP to the one presented in this modification, in order to determine whether the proposed modification is acceptable in terms of land use planning and dedication of land.

Flooding & impacts to proposed structured open space & local park

23. The northern portion of Lot 2 DP 867486 is affected by 'high flow' flooding for the 1% AEP flood event. This area is nominated as 'Structured Open Space' and 'Local Park' therefore, contrary to the original approval, will likely be dedicated to Council for use by the local community and broader public.

Filling of land and construction of structures are prohibited in high flow floodways as it is considered that these obstructions have the potential to increase flooding for adjoining properties and in this circumstance, cause significant damage to the infrastructure, creating a burden to the public. As such, Council does not support the provision of Structured Open Space or a Local Park in any high flow floodways.

To this end, Council will not provide a credit for structured open space or a local park at this location, nor will it agree to accept the land dedication, given it is not in the public interest (refer to further comments in Item 25 below).

Open Space

24. There is a lack of coherency amongst the submitted plans and the delivery (in terms of the quantity and quality/recreation value) of open space. To this end, it is unclear as to whether the neighborhood parks and local parks are included within the 6.548ha amount of open space indicated in the quantity shown in the table (see Figure 1 below) from the Concept Plan, given these sites are not mapped as open space and are located within the Hilltop Village and the Village Centre.

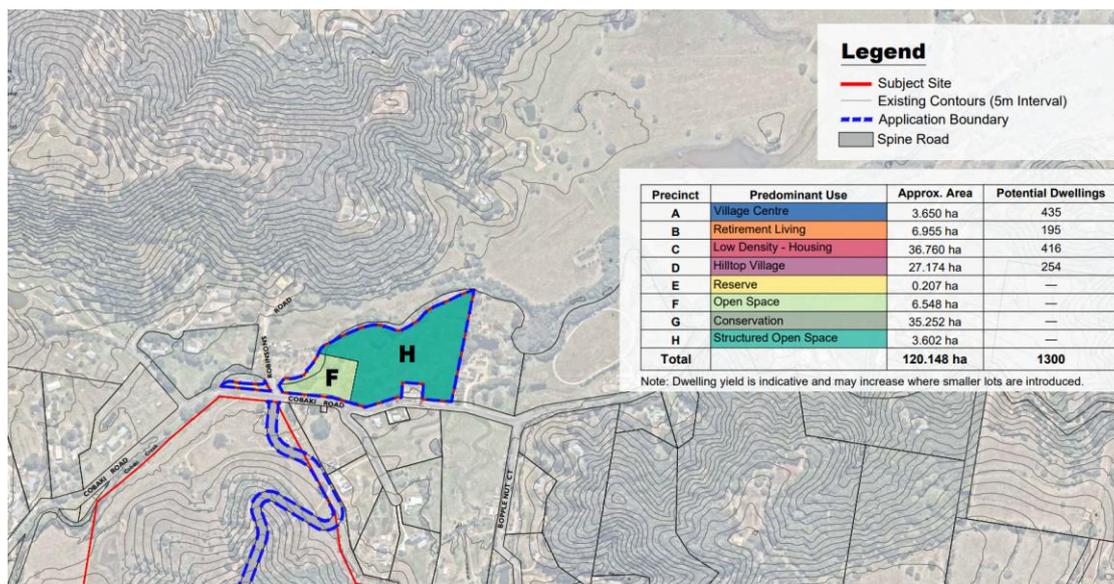


Figure 1: Updated Concept Plan Package prepared by RPS dated 10/11/2024

The Concept Plan Package set, specifically the pages *precinct plan* and *product summary plan* denote the letter F portions as 'open space'. Yet these lots, when viewed with the landscape masterplan are shown to be drainage and conservation lots with only one (1) of these locations being proposed as local parks. The two proposed neighbourhood parks and the third local park are contained within the 'low density' and 'hilltop village' precincts of the Concept Plan. As such, it is unclear what the provided figures for open space relate to.

This matter is extremely relevant given the proposed tenure of the land (dedication to Council) and the low recreation value / usability of dedicated open space for the local community and broader public. This iterates Council's concerns in [Item 1](#) as to the development's performance in the 'substantially same the development' test, given that in this context, it relates to not only a subdivision but a significant amount of land to be dedicated to Council, that was otherwise not considered or approved as part of the original application.

25. The open space lot to the north of the development nominated as structured open space (equestrian facility) and local park is located within a high flow flood affected area and per [Item 37](#) below, no fill or development would be accepted on this site due to its high flow flood affectation. At the current levels and condition, the site would not be accepted as public open space for dedication as it is not in the public interest. There is no other structured open space nominated within the development area. The flood prone nature of the site also means the local park adjacent the equestrian facility could not be accepted by Council. Therefore, the overall requirement of 3.52ha of casual public open space for the development is not met by the proposal. Council has calculated that the development features a shortfall of 1.25Ha of Casual Open Space.

To this end, it is further noted that the yield of Structured Open Space (i.e. sportsfield) based on the development size (3120 persons) is 5.39Ha.

Recommendation:

26. Should DPHI be of a mind to proceed with the current modification application, despite the comments outlined in [Item 1](#) of this submission, amended plans and statement of commitments 26 is requested addressing the following:
 - a. Clearly identified and differentiated public open space, noting the accurate quantity and purpose of each on the Concept Plan for approval (e.g. recreation – park;

drainage infrastructure; conservation, etc) noting that the key "F" on the submitted Concept Plan is not indicative of usable public open space for recreation purposes (such as local, neighbourhood or district parks). By comparison, the sites nominated as embellished parks are generally not shown as open space on the Concept Plan.

Please ensure the Concept Plan is consistent with the Landscape Master Plan and any other reporting that forms part of the submission.

- b. For the reasons previously outlined in this submission, the proposed structured open space/equestrian facility is not supported and therefore the required contribution for public open space is not met through land dedication.

Council would therefore need to enter into further negotiations with the proponent with respect to the delivery of structured open space. Accordingly, the revised statement of commitments should be amended at point 26 as follows – in red text:

26.1.1 "Subject to the density finally approved under the MP08_0234 Application, or a pro rata area calculation being adopted for adjusted densities in the final MP08_0234 approval, the applicant shall dedicate and embellish 4.42 10.15 hectares of structured open space in accordance with the development standards contained in Table A5-8.3 of Tweed Development Control Plan 2007, Part A5 or alternatively pay a contribution in lieu for the area that is not dedicated and embellished on the applicant's land. The amount of the contribution rates shall be determined at the time of documentation of and incorporated into, a Voluntary Planning Agreement (VPA) between the applicant and Tweed Shire Council. The VPA shall be finalised prior to the granting of development consent or major project approval for any part or precinct of the development approved by way of Concept Plan No.08_0234 which creates residential lots or dwellings. ~~Should it be agreed that some sports facilities can be located at the currently proposed site, the VPA will require the applicant to dedicate and embellish on it's land a component of the required 10.15 hectares no earlier than when the Spine Road construction is completed, or contributions in lieu to be paid on a pro rata basis per precinct at the time of release of Final Linen Plan of subdivision by Council for that precinct."~~

27. Upon receipt of amended plans and additional information to address the above mentioned requirements, it is requested that DPHI refer the additional information and amended plans to Council for further consideration and comment prior to determination, noting that a range of new conditions of consent would need to be inserted into the modified consent in order to satisfy the delivery of open space in accordance with Council's requirements as the future land owner.

Biodiversity Conservation

28. The proposed development has a Concept Plan approval dated 29 June 2010 that is subject to a range of prior modifications and approval conditions.

A critical issue in this regard is the NSW Director-General's Environmental Assessment Report (May 2010) (NSW DG EAR 2010) which identifies the conditions on which the Concept Plan has been supported. Based on review of this report, the current MOD 3 application has some significant variations from this approval including an increased number of threatened plant species proposed to be removed and inconsistencies with regard to the area of rehabilitation and revegetation proposed.

29. The current proposal includes the intent to remove 454 threatened plants and at least 2.13 Ha of EEC. There is insufficient information available to determine whether this is consistent with the originally approved development. To this end, additional information is required to enable the proposed modification to be analysed and reconciled with the NSW DG EAR 2010 regarding:
- a. The NSW DG EAR 2010 identifies 217 threatened plants for removal and the current proposal identifies 454.
 - b. The NSW DG EAR 2010 identifies 6.49Ha of revegetation and the current proposal identifies 3.81 ha.
 - c. Several species proposed for removal including Fine-leaved tuckeroo (*Lepiderema pulchella*), Durobby (*Syzygium moorei*) and Smooth Scrub Turpentine (*Rhodamnia rubescens*) are identified as subject to the serious and irreversible impact provisions of the *NSW Biodiversity Conservation Act 2016*.
 - d. Further issues in relation to additionality of proposed offsets, overlap with proposed ecological setbacks and buffers as detailed in Items 31 and 32 below.
 - e. Careful attention to the viability of the proposal once further detailed design and planning has been completed for infrastructure and bushfire planning requirements; including asset protection zones (APZs) and proposed bushfire management trails (see discussion in [Items 39-43](#)).
30. It is acknowledged that the proponent has advised that a concurrent application for Certification under Clause 34A (3) of the Biodiversity Conservation (Savings and Transitional) Regulation 2017 has been submitted. This certification, if issued, recognises offset arrangements made before the commencement of Part 7 of the NSW Biodiversity Conservation Act. It is noted that this applies to an approved Concept Plan, but that the current Mod does not appear to be fully consistent with the approved Concept Plan regarding biodiversity impact nor offsetting arrangements. Further, it appears that the offsetting arrangements contemplated by the Concept Plan approval may be compromised by the use of areas proposed for offsetting for infrastructure, including bushfire protection measures.
31. Compensatory planting to offset the removal of 454 threatened plants and a minimum of 2.13 ha of EEC is proposed. The individual threatened plants are proposed to be offset at a ratio of 5:1. The revised Site Rehabilitation and Pest Management Plan identifies areas for restoration, assisted regeneration, regeneration and revegetation within and adjacent to the areas of land proposed to be retained.

The Mod 3 proposal does not offer a best practice approach to compensating for the loss of significant species or ecosystems as:

- a. The proposal does not adequately address the avoid, mitigate and offset hierarchy. The apparent increase of more than 100% in loss of threatened plants is assumed based on the previous concept approval and no genuine effort to avoid this impact is offered.
- b. The compensatory planting for individual threatened plants proposed for removal is also being relied upon to offset the loss of EEC and threatened species habitat. It is standard practice, including through the NSW Biodiversity Offset Scheme to consider and address EEC and threatened species habitat impacts and credit liabilities as separate and additional Items.

- c. The areas proposed as compensatory planting for offsets are also identified in other plans including the Landscape Master Plan as accommodating bushfire infrastructure, walking tracks and car parking areas. These areas may also be required for APZs that as yet have been unable to be determined. It is not feasible to achieve the full extent of conservation outcomes required to offset the proposed impact with incompatible land uses in the same locations.
32. Buffers and ecological setbacks are required to manage the impact of adjoining land uses. This requirement applies to setbacks from retained and proposed EECs, retained threatened plants and threatened species habitat. Buffers are also proposed to manage potential impacts between proposed residential and existing or continuing agricultural land use. Setback and buffer distances are generally set based on the exclusion of other land uses however it is acknowledged that some uses may be compatible with setbacks and buffers (for example, open space for passive recreation may be suitable within some ecological setbacks and agricultural buffers).

The current proposal as per Mod 3 does not adequately address best practice ecological setback or buffer requirements. To this end, the buffer distances required are likely to fundamentally change the layout of the proposal and therefore should be addressed prior to the issue of any modified consent. Most notably, the following is advised:

- a. The proposed buffer distances (10m to EEC and 5m to retained threatened plant) do not meet current standards (30m to EEC and 10m minimum for threatened and significant species);
- b. The ecological setback cross sections do not specifically exclude any stormwater or other services / infrastructure and;
- c. The ecological setback areas are proposed to include a range of incompatible uses including regeneration / revegetation, bushfire APZ's and open space / recreation.

It is essential to reconcile these matters to enable assessment of the further issues regarding offsets as detailed in Item 31 above.

33. Whilst Council staff have engaged in some preliminary discussions with the proponent in relation to dedication of retained areas of vegetation, it has not undertaken any further discussion or negotiations about the proposed mechanism for which the conservation land is to be suitably protected and maintained in perpetuity. Moreover, Council has not resolved to agree to or accept the dedication of this land by Council resolution. The reason for such is that the discussions regarding the provision of land dedication at the subject site have not progressed beyond the preliminary discussions and therefore there is no supporting information to report to Council. It is considered that the critical issues for resolution and agreement by Council include:
- a. *Legal mechanism* – a suitable legal mechanism for the agreed arrangements, dedication, protection and funding is required to be specified and agreed. This may involve a Voluntary Planning Agreement or a Special Rate Variation;
 - b. *Funding* – the agreement to be made in relation to the dedication of land to Council requires appropriate funding for management and maintenance of the conservation lands and any recreational infrastructure accepted. Areas protected for conservation purposes for development proposals of this scale require management funding in perpetuity;
 - c. *Conditions* – the proposal indicates an intent to dedicate the land to Council after the rehabilitation works are completed, subject to meeting specified performance targets. The targets proposed in the revised Site Rehabilitation and Pest Management Plan are conditionally supported, subject to resolution of the issues identified herein, with

reference to the location and extent of compensatory actions and how these interrelate to bushfire protection and recreational infrastructure and;

- d. *Timing* – further detail is required to establish an agreed position on how the timing of dedication and funding aligns with the proposed development staging.
34. Opportunity to provide for landscape connectivity in an east-west orientation has been well realised through the proposed retention, protection and management of conservation lands along the southern portion of the site. There is also an important opportunity to provide for a level of north-south connectivity that appears to be only partially realised. It is recommended that safe wildlife passage at the 'Spine Road' north of the water reservoirs is facilitated through the design and provision of a suitable connectivity structure. Connecting the proposed open space in this location north of the Spine Road, eastward to the proposed open space along the north-eastern extent of the site is also recommended. It is expected the detail of such should be included in any future DA submission to Council.
35. Further consideration is required to address the impact of wildlife injury and mortality resulting from the vehicular use of the proposed development. As known habitat for threatened species, it is critical to identify potential impacts and develop and implement planning and management responses to ensure that the proposed development does not result in increased wildlife impacts.
36. The submitted statement of commitments is to be revised to address required amendments due to the issues contained herein, in relation to biodiversity and bushfire (below) and to ensure that reference to documents and management plans is accurate and specific to the version number / date issued.

Recommendation:

37. Should DPHI be of a mind to proceed with the current modification application, despite the comments outlined in [Item 1](#) of this submission, it is recommended that additional information be requested to satisfy the matters raised in [Items 28-33](#), and 36 above and recommendations in [Item 45](#) below and that such information be referred to Council for further consideration and comment, given it will be the ultimate recipient of this land.
38. It is considered reasonable that Items 34 and 35 be dealt with via recommended new conditions of consent.

Bushfire Protection Requirements

39. The submitted Bushfire Report identifies that it relates to the Concept Plan only and it fails to address elements that are critical to the assessment of the overall viability of the proposal. This includes the interrelationship between bushfire planning and protection aspects with revegetation, offsets, staging, open space provision and management. Each of these issues has the potential to impact on the other where there are competing or incompatible uses proposed. The result of which would be a drastic change to the layout of the concept approval that would potentially require a separate consent by DPHI.
40. The bushfire report is based on existing vegetation only and thus does not consider the proposed regeneration / revegetation that is required to meet the DG EAR 2010 approval (see [Items 28 and 29](#) above). This may result in one or other of these elements being unachievable and the need to ensure that this is reconciled in a manner that does not increase the risk to any existing or proposed development or assets. Similarly, the Bushfire Report identifies the requirement to ensure all residential and commercial lots can meet the standards for Inner Protection Area on land not steeper than 18 degrees.

41. The submitted Bushfire Report nominates limitations to the assessment. In particular, it is noted that an acceptable performance solution will be required for perimeter roads between all future lots and hazard vegetation. There are several areas that have not been provided with perimeter roads. In this regard a bushfire design brief in consultation with NSW RFS will be required to address these areas. Where the Bushfire consultant has nominated that there may be merit for an acceptable performance solution to be achieved, the following is noted by Council:

- a. Council does not accept a “no parking” area adjacent to the hazard area to the south of the site, in the location of the perimeter road. Therefore, in order for a performance solution to have merit and still satisfy Councils requirements, this road width at this location is to be increased to satisfy on street parking and required APZ's.
- b. Page 34 of the submitted Bushfire Report states that the merit for lack of perimeter road is based on these areas being generally adjacent to grassland or remnant rainforest areas requiring less fire brigade intervention to the hazard, compared to forested areas with long fire runs threatening property and occupants. See Figure 2 below.

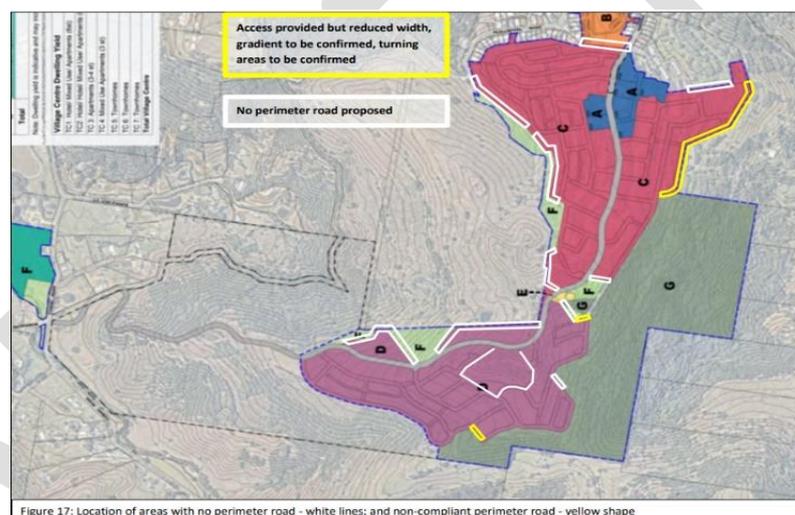


Figure 2: Extract of plan nominated in the submitted Bushfire Report

- c. It is also noted that the proposed bushfire trails do not meet RFS acceptable solutions and that the report does not assess the management implications of open space, parks or drainage reserves having regard to the matters raised in Item 43 of this submission.
42. The Bushfire Report considers rainforest vegetation as that nominated in the conservation area (Key “G” in the Use Plan). However, as previously mentioned, it appears that the north eastern aspect of the conservation area which is also nominated open space has not been considered as part of the bushfire report and it is unclear as to whether the subject land will contribute to a hazard and associated Asset Protection Zones (APZ) can be accommodated on adjoining residential land, noting that there is minimum buffer requirements for conservation land pursuant to Section A19 of TDCP2008 and this area lacks perimeter roads per Figure 2 above.
43. Pursuant to “Asset Protection Zones on Public Land” Policy adopted by Council 3 December 2020, Council does not support the use of public land to meet the APZ requirements of adjoining development.

To this extent it is noted that the subject development being approved prior to the commencement of the above policy does not save this development from complying with the policy given that the nature of the approval was such that the APZ's would have been within private tenure (community title) as opposed to Open Space to be dedicated to Council.

44. The submitted Engineering information states “*To provide connectivity and to meet bushfire constraints some perimeter roads and bushfire tracks due to the combination of meeting longitudinal requirements, combined with steep cross sections, required walls in road reserves (i.e. not in private lots) to be able to service the site*”.

The provision of retaining walls along the perimeter road is likely to pose an impact on access and safety (egress from hazard area) for emergency services defending a fire front in the hazardous land and at the perimeter road location.

Recommendation:

45. Should DPHI be of a mind to proceed with the current modification application, despite the comments outlined in [Item 1](#) of this submission, it is recommended an amended Bushfire Report, engineering information, Concept Plan and ecological assessment be requested to satisfy the matters raised in [Items 39-44](#) and that such information be referred to Council for further consideration and comment, given it will be the ultimate recipient of this land.

Sewer supply

46. The proposed Concept Plan fails to demonstrate how the site will discharge to the ultimate location of Gollan Drive Kennedy Drive Bridge. The delivery strategy should take advantage of any pressure head generated from the elevated catchment. Pump Station 4 on Cobaki Road may not be required with the consideration of the head pressure that will be provided from the gravity system from Catchment 4. If this can be utilised, this could potentially assist with the transportation of effluent to the final sewer connection at Gollan Drive / Kennedy Drive Bridge.
47. The connection point to Council's system is the existing sewer rising main at Gollan Drive / Kennedy Drive bridge and not the Gollan Drive Sewer Pump Station.
48. The Concept Plan should consider the ultimate potential loading from the surrounding catchment that will connect into the final sewer connection at Gollan Drive / Kennedy Drive Bridge.
49. The Concept Plan demonstrates that the development will drain effluent through a series of gravity systems within four catchments. These catchments will be pumped from southeast to the northwest. The requirement for Pump Station 3 should be reviewed after consideration of the optimum gravity system for this area.
50. It is recommended that DPHI request the proponent to update the Concept Plan to reflect the legend provided (i.e Manholes have been represented as pump stations and some pump stations have no representation).

On site sewage management

51. A private sewage pump station is currently proposed in Stage 2 or 3. The Mod. Report does not advise if this has changed, however notes Sewer pump station and mains (north near

Cobaki Road, but the exact location is yet to be determined). Please confirm this aspect of the proposal based on staging.

Water supply

52. The applicant has proposed a combined 2766sqm site for the new reservoir inclusive of the existing reservoir. Council has assessed the reservoir requirements and has determined that the proposed land size would not be suitable. A minimum area of 52m x 75m (3900sqm, this is inclusive of the existing reservoir site) is required. This is to also allow for batters, retaining works and the new Booster Pumping Station.
53. The estimated top water level for the proposed reservoir is to be RL 213.34m AHD.
54. The proposed reservoir location within drawing 44401-WNA-752, is not a suitable location for construction of the future reservoir. Figure 3 below shows the preferred location for the new reservoir.

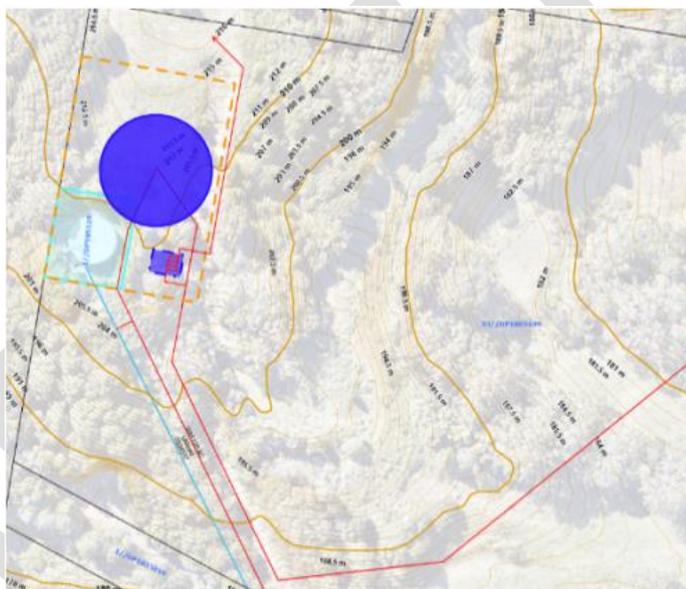


Figure 3: Councils preferred Reservoir arrangement

55. The new 300mm supply main appears to be entering the existing reservoir above the bottom water level. The maximum high point of the proposed 300mm supply water main should not exceed the estimated level of RL 205.5m AHD (1.5m below the final floor level of the reservoirs).
56. It is unclear if the proposal is to remove the existing 150mm and 250mm main and use the proposed 300mm main as the supply main for both reservoirs. If not, the current alignment of the existing 150mm and 250mm water main within proposed development is not suitable (it is noted that the proposed realignment of the 250mm water main was mentioned within the Engineering report developed by Mortons Urban Solutions, drawings also note the 150 and 250mm are to connect to the proposed 300mm pipeline).

Recommendation:

57. Based on the above points, should DPHI be of a mind to proceed with the current modification application, despite the comments outlined in [Item 1](#) of this submission, it is recommended that DPHI request an updated concept water servicing plan to reflect the above Items, as summarised below:

- a. Highlighting the actual locations of Pressure Release Valve (“PRV’s”) within the proposed water servicing network and;
 - b. Include the water pressure zones as separately hatched/shaded areas so each zone can be readily identified.
58. It is recommended that any response to the above requested amended plans be provided to Council as the Water Authority for further consideration and comment and to provide wording for updated conditions of consent where required (per TSC Engineering Design Specifications).

Road location, hierarchy and design

59. The submitted plans indicate that the proposed Spine Road (Road 1) will comprise of an 18.5m wide road reserve. This equates to a “low volume neighbourhood connector road 3000-5000vpd” per Councils standards. The plans are to be amended to reflect a “normal neighbourhood connector road up to 7000vpd”, being 20.9m wide, particularly in proximity to the Village Centre. Width is also subject to adequate width for underground services and utilities, and public and active transport.
60. The proposed Spine Road (Road 1) will have longitude grades up to 16% which is a departure from Section A5 of TDCP2008 and Councils Design Specification (see extract of D1.6 of Councils Design specification D1 – Road Design in Figure 4 below). The provision of such grades will impact future access for residential lots and also pedestrian and vehicular movement (particularly for heavy vehicles such as waste collection and buses in the locations of the steep grades). This would require more detailed analysis prior to Council endorsing the proposal at concept stage, noting that the previous approval did not provide for residential lots directly accessing the proposed Spine Road.

Road type	Desirable maximum grade	Absolute maximum grade
	%	%
Arterial / Distributor	6	8
Neighbourhood connector	8	12
Access street (urban or rural residential)	10	16
Access lane	8	12
Cul-de-sac head	5	5
Industrial	6	10

Table D1.6

Figure 4: Extract of Table D1.6 of Councils Design Specification D1 - Road Design

It is noted that contrary to the original consent, the submitted Engineering Plans demonstrates lot layouts with up to 50 allotments having direct access from the Spine Road, which Council is opposed to due to safety issues.

61. The proposed Esplanade Perimeter Road is adjacent to bushfire hazard and therefore forms a Bushfire perimeter Road with an 8m wide pavement. In order for this road to satisfy bushfire requirements, this road would require no parking (both sides) by way of an accepted performance solution. However, this is not acceptable to Council as previously noted. It is requested that the design of this road be amended to provide widened pavement to deliver unrestricted parking on the residential side and parking (as applicable) adjacent to the biodiversity conservation land of the proposed Esplanade Perimeter Road.
62. The submitted engineering information outlines that on longer straights of roads, traffic calming measures such as thresholds, slow points, speed humps, chicanes and splitter

islands will be utilised in detailed design to control speed. (Speed humps will only be considered on roads with volumes less than 1000 VPD with a preference for horizontal calming devices where possible).

Council will seek to avoid Splitter Islands (where possible) as this places limitations on traffic movement. The provision of such calming measures should not be used as a design solution and alternate means of calming devices are encouraged in the first instance.

Recommendation:

63. The Concept Plan and Engineering information be amended to provide widened pavement to deliver unrestricted parking on the residential side and parking (as applicable) on any Esplanade/Perimeter Road which is forming part of an APZ having regard to adjacent biodiversity conservation land.
64. It is recommended that any response to the above requested additional information be provided to Council for further consideration and comment and to provide wording for updated conditions of consent where required (per TSC Engineering Design Specifications).

Connectivity to surrounding land

65. Connectivity to future developable land to the north has not been adequately demonstrated in the submitted concept information.

It is anticipated that at minimum, road stubs should be provided on the Concept Plans given there is frontage of the spine road to the allotments of land which are zoned R1 and not yet developed (147 McAllister Road).

Additional information and amended plans are requested to be supplied to demonstrate land use allocation¹, road hierarchy and associated road reserve widths, grades and traffic modelling allows for a future intersection at this location, or other suitable location(s) as deemed appropriate by the project team.

66. As previously mentioned, the proposed road connecting to the southeastern lot which adjoins the subject site does not align with the existing right of carriageway registered on the Section 88B Instrument for SP93623.

The connection of this road is required in Control C3 Section 3.2 of Tweed DCP 2008 (B27) and under the existing consent condition B4 (noting that the historic Lot/DP for this land was Lot 30 DP850230). To this end, whilst not proposed by the applicant, if the proposed modification were to be determined favourably, Condition B4 on the consent will need to be amended to reflect the current SP referenced in this comment.

Recommendation:

67. The Concept Plan and Engineering information be amended to accommodate the comments raised in Items 65 and 66 above.

¹ There is a green space (nominated scenic park) buffer between the proposed Spine Road (Road 1) and the adjacent land in some of the submitted plans (not limited to but including Plan 3.1 (rendered Masterplan), submitted Subdivision Concept Plan set 12122 prepared by RPS except for the product summary plan, which reflects Low Density Housing in the location of the Scenic Park, this represents another anomaly amongst the submitted documentation that needs to be clarified.

68. It is recommended that any response to the above requested additional information be provided to Council for further consideration and comment and to provide wording for updated conditions of consent where required (per TSC Engineering Design Specifications).

Traffic generation/impacts

69. Condition B2(1) and Condition B2(2) outlines specific traffic related conditions of consent as it relates to internal traffic generation rates and its impact on the broader road network (which is limited in capacity). In particular, Condition B2(1) limits traffic generation to a maximum of 3221 trips on Kennedy Drive from The Rise development site until additional capacity required to accommodate the traffic generated by the proposed stage of the development can be provided in the road network. Condition B2(2) assumes 68% of traffic from The Rise will use Kennedy Drive.

The submitted Traffic and Transport Assessment Report assumes 50% of trips generated by non-residential land uses will be internal to the subdivision and allocates 80% of residential development traffic toward Kennedy Drive. However, there is a lack of information to substantiate these figures, and the applicant has not requested to amend these Conditions.

Concerns are raised over how the external trip rates have been assumed having regard to the reduced retail, commercial and school opportunities for internalised services and the potential increase in a higher proportion of traffic onto the external road network (particularly Kennedy Drive) which is currently assumed to be a 68% traffic generation rate in Condition B2(2).

Having regard to the above scenario, it is unlikely that the development would be able to satisfy the current limitations under Condition B2(1) of the consent.

Given there is no proposal to modify the relevant consent conditions within B2 (2) to align with the above assumptions and the discrepancy in the Traffic and Transport Assessment Report, should the applicant wish to vary the existing B2 Conditions, further evidence needs to be provided to satisfy the assumptions' legitimacy.

70. There is no proposed changes to the "Measure commitment" in the revised statement of commitments, being:

19.1.1 Upgrade Marana Street.

19.1.2 Upgrade Cobaki Road at the appropriate time in conjunction with 19.1.4 below.

19.1.3 Provide traffic lights (or a roundabout) at Simpsons Drive and Scenic Drive.

19.1.4 Construct the Spine Road when the capacity of vehicles per day as agreed with Tweed Council on Kennedy Drive is exhausted.

71. No additional "spare" traffic capacity is to be assigned to the modified Concept Plan, due to observed capacity constraints on Kennedy Drive.

Recommendation:

72. In addition to the above, after the requested information in [Item 69](#) has been assessed by a suitable traffic engineer and accepted by Council, Conditions B2(1), Condition B2(2), C1(1)(a) will need to be updated.

Please refer the additional information and/or amended Traffic and Transport Assessment Report back to Tweed Shire Council for further consideration and comment prior to determination.

Earthworks & Retaining walls

73. The provision of 6m retaining walls supporting Council's Road is a major concern and whilst Council accepts that this may be unavoidable in some parts of the site, further information and agreement needs to be entered into between the applicant and Council in relation to the design and location of such walls.
74. Council does not support large boulder walls supporting Council's Road, as shown on the Engineering Plan (extract in Figure 5 below). To this extent, Council will require safety features such as safety barriers behind the kerb and pedestrian safety fence along the top of the retaining walls where retaining walls are provided in the Council's Road Reserve. It is acknowledged that this can be dealt with at detailed design stage, however may need to form a new condition of consent.

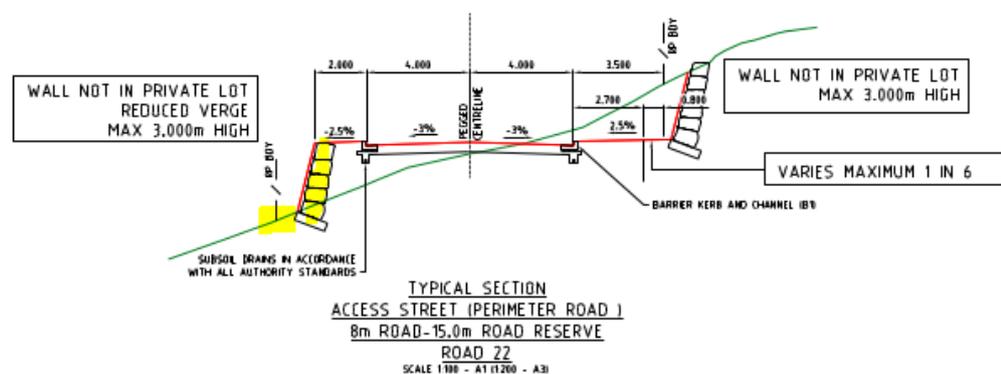


Figure 5: Extract of Typical Section Plan for Perimeter Road showing boulder wall

75. The submitted documentation fails to demonstrate provision of maintenance tracks in the location of retaining walls and batters. The extent of retaining walls likely to occur across the development site compromises maintenance access points in order for Council to undertake the required maintenance of dedicated land. To this end, Council will require a minimum 3.0m wide (maximum 1:6 crossfall) service track provided at the toe of the retaining walls. This would likely require a redesign of the current design and layout for the Concept Plan and therefore should be provided as part of an amended plan.

It is noted that whilst this may have been inherent in the originally approved development, the extent of land to be dedicated to Council as a result of the proposed modification would require Council to undertake additional considerations in terms of safety and access of Council land once dedicated.

76. Council does not have the resources to maintain the proposed retaining walls located in land to be dedicated to Council. As such, a mechanism to provide a resource allocation for the maintenance of retaining walls in perpetuity is to be agreed to by relevant parties prior to the proposal being approved.

Recommendation:

77. It is recommended that the Concept Plan and Engineering information be amended to demonstrate that access can be provided in accordance with Item 75 above and also consider biodiversity buffers and any APZ's.
78. It is requested additional information and amended plans be provided for further consideration and comment by Council and to provide wording for updated conditions of consent where required (per TSC Engineering Design Specifications).

Property matters

79. At its Council meeting on 21 November 2024, Council resolved that land owner's consent be granted to Greenland Developments for the lodgement of the said application over Council owned operation land at Lot 1 DP1033807, Lot 1 DP1033810, Lot 1 DP595529 and Lot 1 DP1033811 on the conditions set out below:

- a) *maintain access for adjoining property SP SP93626 (sic) (should read SP93623) (previously Lot 30 DP850230) to the Spine Road, similar to intent of condition B4 (1) Access in approved Concept Plan;*
- b) *ensure the proposed development on Lot 11 DP1221128 will also be provided similar access;*
- c) *rights to the Spine Road (through SP93623) or an effective road network;*
- d) *maintain easements benefitting Council for water infrastructure;*
- e) *ensure Council has adequate access to the water reservoir site; and*
- f) *pay appropriate compensation for the sale of land, being closed roads.*

80. Per Item 1(c) above, there are several aspects of the proposal that fail to acknowledge the conditions set out by Council. It is recommended that DPHI request the proponent to provide a written response Item 79 above, noting Item 81 below.

81. To date, negotiations for appropriate compensation for the sale of land, being closed roads has not been initiated by the proponent.

Recommendation:

82. Should DPHI be of a mind to proceed with the current modification application, despite the comments outlined in [Item 1](#) of this submission, conditions of consent be imposed to require the acquisition of closed roads **prior to the lodgement of any DA.**

Stormwater

83. Contrary to the original Concept Plan, due to the proposed tenure of land, Council will be responsible for stormwater disposal once the infrastructure and associated land is dedicated to Council. As such, further information is required in order for Council to determine whether the proposed layout of the Concept Plan is acceptable, having regard to the proposed bio-retention basins; the topographic values of the site (existing and proposed) and; the current legal point of discharge for the site.

To this end it is noted that the submitted information indicates numerous basins will provide both quality and quantity management functions, however it cannot do so for all events up to the 1% storm, affirming the importance of understanding lawful points of discharge and any impacts on downstream land or watercourses. It is expected, and should be demonstrated, that predevelopment flows be achieved at the nominated lawful discharge points in a 1% AEP storm event.

84. The proposed bio-retention basins are not provided on the concept layout plan, yet this will affect the subdivision lot and road layout. It should be demonstrated that water sensitive stormwater management is incorporated in the actual subdivision design as proposed in the Integrated Stormwater Quality and Quantity Assessment prepared by Gilbert & Sutherland dated November 2024.
85. Engineering design has been provided for the proposed roads, retaining walls, sewer, water and earthworks. However, Stormwater Management (including but not limited to proposed bio-retention basins) has not been addressed in the engineering drawings. At minimum, the proposed bio-retention basins should be addressed in the subdivision design.

Recommendation:

86. Based on the points raised above and given that bio retention basins are nominated as the main form of stormwater treatment (with sizing provided in the 'Integrated Stormwater Quality and Quantity Assessment' prepared by Gilbert & Sutherland dated November 2024), should DPHI be of a mind to proceed with the current modification application, despite the comments outlined in [Item 1](#) of this submission, it is recommended that a request be made for additional information to address [Items 83 – 85](#) above).
87. It is recommended that any response to the above requested additional information be provided to Council for further consideration and comment and to provide wording for updated conditions of consent where required (per TSC Engineering Design Specifications).

Staging

88. The submitted staging plan is not supported. This aspect of the proposal is to be reconsidered having regard to the issues previously raised in this submission in relation to the conservation land and timing of dedication once a mechanism to maintain the subject land is established.

Furthermore, given the constraints with traffic generation rates in the existing consent conditions (see Condition B2) and to what extent Stages 1-4 will be undertaken in terms of trip rates, the proposed staging cannot be supported in the current format without a commitment to upgrade the surrounding road network as and where required.

Recommendation

89. Should DPHI be of a mind to proceed with the current modification application, despite the comments outlined in [Item 1](#) of this submission, it is recommended that any response to the above requested additional information be provided to Council for further consideration and comment.

The proposed sequencing at concept design stage should address the infrastructure requirements in relation to the proposed water and sewer and sequencing to suitably service the development.

Land Use Conflict Risk Assessment (LUCRA)

90. The submitted LUCRA by Gilbert and Sutherland dated 15 November 2024 fails to demonstrate that it has been undertaken in accordance with Department of Primary Industries Guidelines (leading guidelines in NSW) on preparing LUCRAs.

The following considerations are considered lacking in the assessment:

- a. Details in establishing context by assessing topography, climate and natural features;
- b. Site inspections to understand what other land uses exist and potential land use conflicts that may not be visible through a desktop assessment;
- c. Stakeholder identification and consultation/interviews and;
- d. Consistency between recommendations and proposed plans, Table 8.1 and the image of Proposed Buffers (Drawing 005 of the report) do not appear to be consistent;
 - i. Area C which includes a 30m open space buffer to the south and 30m open space to the north (noted as N/A in the table);
 - ii. Area D which includes a 30m open space to the east (noted as N/A in the table) and;
 - iii. Area F which includes a 50-riparian buffer to the north.

91. Regarding buffers for agricultural and land use conflict risk minimisation, it appears that the assessment has been based on current land use of adjacent lands only which is not consistent with the best practice requirement to consider proposed or potential uses. The assessment also applies a 30m open space buffer on residential land that in some areas on the northern extent overlap with proposed residential and open space areas. This is explained in the relevant report by the caveat that 'no buffer is required when the adjacent land becomes residential'. This caveat appears presumptuous of possible future development and may result in significant land use conflict for a considerable time in the interim.

Recommendation:

92. Should DPHI be of a mind to proceed with the current modification application, despite the comments outlined in [Item 1](#) of this submission, it is recommended that an updated LUCRA assessment be undertaken having regard to the revised distribution of land uses. It is requested that the revised LUCRA assessment be referred to Council for further consideration and comment.

Dwelling Design Code

93. The submitted Design Code should generally accord SEPP (Exempt and Complying Development Code) 2008 and or SEPP (Housing) 2021 for the purpose of Dwellings and Secondary Dwellings. Any additional site specific provisions would need to be workshopped with Council in greater detail and this would ordinarily occur prior to the Concept Approval being approved.

As such, having regard to the manner in which this Design Code has been presented (with limited time for proper consultation and review by Council), an equally limited high level review of the Design Code has been undertaken for the purpose of this submission and the following is advised:

- a. Council does not support 1.5m ground floor rear setbacks with Private Open Space ("POS") areas adjacent to rear or side boundaries in a location that has maximum

permitted heights of 13.6m (up to 4 storeys). The provision of this type of built form is likely to result in adverse amenity impacts in terms of overshadowing, cross viewing and solar penetration in the POS areas. Furthermore, in the high set locations, where sites maximise their development yield based on the zoning and permitted building height, the amenity of the outdoor private open space areas are likely to be adversely affected by wind tunnelling scenarios;

- b. Council does not support secondary dwellings being permitted up to 100sqm and being exempt from payment of developer contributions pursuant to Section 7.11 of the Act.

The provision of a 100sqm dwelling forms a dual occupancy arrangement and capable of supporting a significantly increased occupancy of the land without adequately catering for the provision of local infrastructure and services to support the increased density of the sites and;

- c. Separate screened bin storage areas for secondary dwellings is not supported. Shared bin storage is the preferred method of waste collection given that Council waste collection service rates are for a single dwelling. If additional bins are required, they can be requested by the landowner and charged accordingly (only applies for General Waste).

Recommendation:

94. Should DPHI be of a mind to proceed with the current modification application, despite the comments outlined in [Item 1](#) of this submission, given the Design Code is a new aspect of the proposal that has otherwise not been previously consented to, it is recommended that DPHI not approved the Design Code as it does not form substantially the same development. It is recommended that DPHI either seek a new application with an updated design code to address the matters raised in Item 93 above or defer the approval of such to Council as part of a future DA. This will enable proper consultation with Councils Urban Designers and the community, in order to determine the best design outcomes for future development on this land.

As demonstrated in the detail above, concerns are raised over the proposed modifications performance against Section 4.55 of the Act, having regard to the extent of changes and the consequential impact of those changes forming a drastically different concept of development at the subject site, compared to that originally approved. This is particularly relevant when considering the manner in which the Concept Plan was originally approved and its declaration as State Significant site pursuant to SEPP (State Significant Precincts) 2005 (now repealed).

Finally, the consequential impact of the proposed changes is not considered to be consistent with the goals set out by the NSW Government in the North Coast Regional Plan 2041 as far as providing a thriving, interconnected economy, vibrant and engaged communities and great housing choice and lifestyle options.

Council welcomes further engagement with DPHI and if desired, the project team, to discuss the issues raised in this letter and determine an appropriate pathway moving forward.

For further information regarding this matter please contact Hannah Van de Werff on (02) 6670 2564.

Yours Sincerely,


per.
Colleen Forbes

Team Leader Development Assessment