

PLANNING REPORT



DRAFT

**Application to amend *Tweed Local Environmental Plan 2000* to rezone
Cudgen land to 2(c) Urban Expansion**

Prepared for
Kingscliff Land Company Pty Ltd

planning workshop australia

11 Bond Street Newcastle PO Box 810 NSW 2300

Tel. + 61- 2- 4929 6388 Fax (02) 4929 3188

A.B.N. 35 068 238 826

A Division of Lyneham Planning &
Management Consultants Pty. Limited A.B.N. 35 068 238 826

December 2006

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1 INTRODUCTION

This Planning Report examines and submits a proposal to amend *Tweed Local Environmental Plan 2000* (LEP 2000) in respect of Lot 1 in DP 593182, Lot 1 in DP 616751, Lots 101 and 102 in DP 866795, Lot 330 in DP 755701, Lot 13 in DP 868620, Lots 1 and 2 in DP 632211, Lot 14 in DP 871062, Lot 1 in DP 183425, Lot 18 in DP 870050, and Lot 1 in DP 312920, Tweed Coast Road and Cudgen Road, Cudgen NSW.

Sections 2 and 3 of this report provide a description of the site and the surrounding locality. Section 4 describes the proposed amendment to LEP 2000. Section 5 addresses the statutory considerations of the proposal, while Section 6 addresses the merit considerations. Section 7 of the report comprises the report's conclusions.

2 SITE DESCRIPTION

2.1 The Site and Existing Development

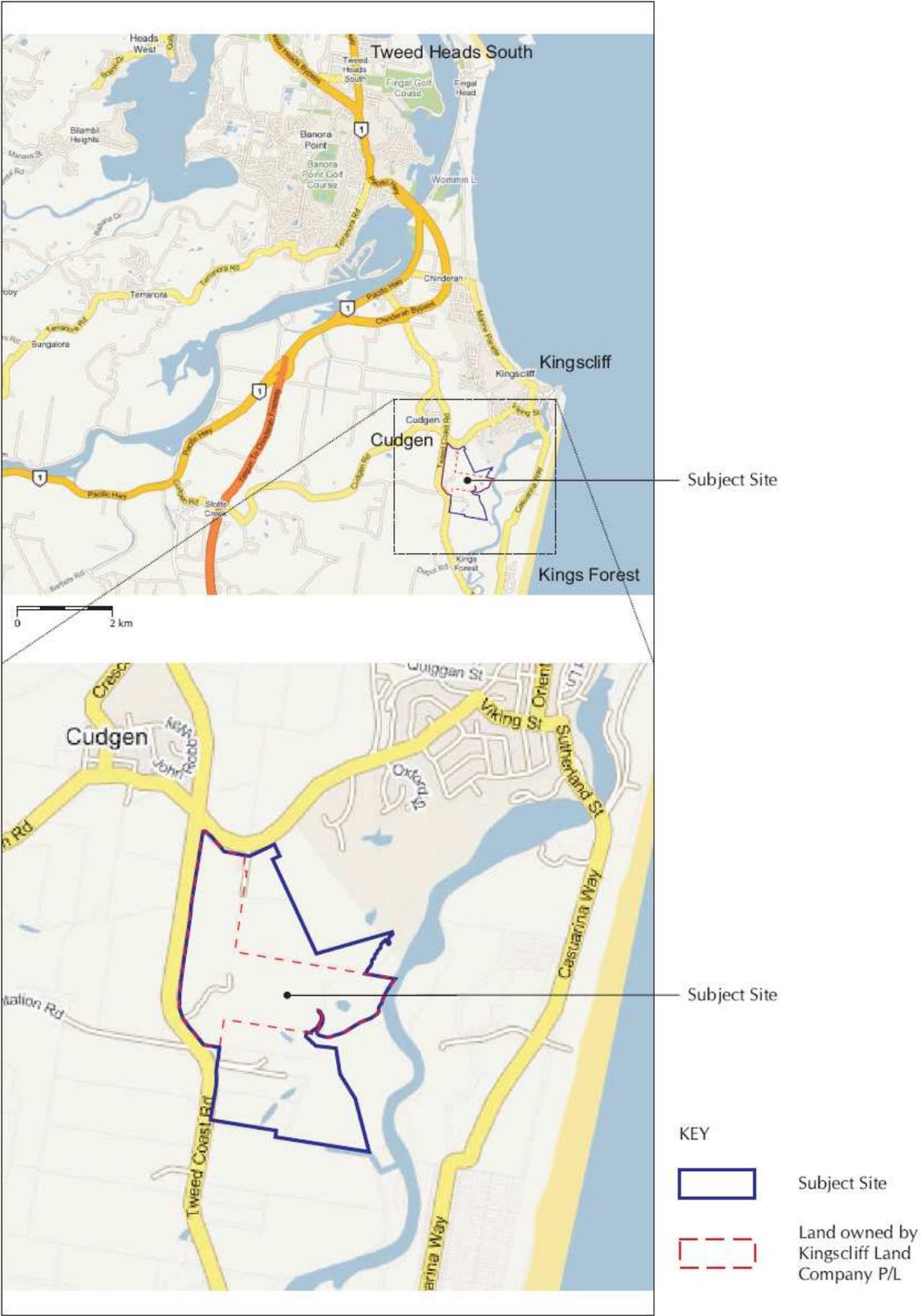
The subject land is located adjacent to the Tweed Coast Road, Cudgen, and comprises a somewhat irregular shape of approximately 116 hectares. The site is predominantly zoned Rural 1(a) and Rural 1(b1) Agricultural Protection, with small areas in the east of the site zoned Environmental Protection. The portion of the site zoned Rural 1(b1) comprises Lot 1 in DP 616751, Lot 101 in DP 866795, most of Lot 13 in DP 868620, and western portions of Lots 1 and 2 in DP 632211 and Lot 14 in DP 871062. Small pockets of land in the east of Lots 1 and 2 in DP 632211 and Lot 13 in DP 868620 are zoned Environmental Protection 7(a), and a small portion in the north-eastern corner of Lot 330 in DP 755701 is zoned Environmental Protection 7(l) Habitat. The balance of the site is zoned Rural 1(a). The location, zoning, and lot layout of the subject site are shown in Figures 1, 2, and 3 respectively.

The State Significant Farmland designation, as described in the Northern Rivers Farmland Protection Project 2005 (NRFPP), applies to land in the north, west, and south-west of the subject site and accounts for a little less than half of the subject land. The remainder of the site is classified as 'Other Rural Land' under the NRFPP. The majority of the subject land has been cleared in the past for small crop and sugar cane production, with substantial areas of wetland and littoral rainforest remaining in the eastern portion of the site.

The large central portion of the site is generally low lying with a gentle incline from east to west. Topography in the northern portion of the site ranges from gentle inclinations to steep rocky slopes and outcrops. In the southern portion of the site, moderate slopes rise toward the south and south-west of the site. Surface water flows from west to east across the subject land and drains to the wetlands associated with Cudgen Creek. The central portion of the subject site is shown in Photo 1 below.



Photo 1: View of part of the site looking south along Tweed Coast Road



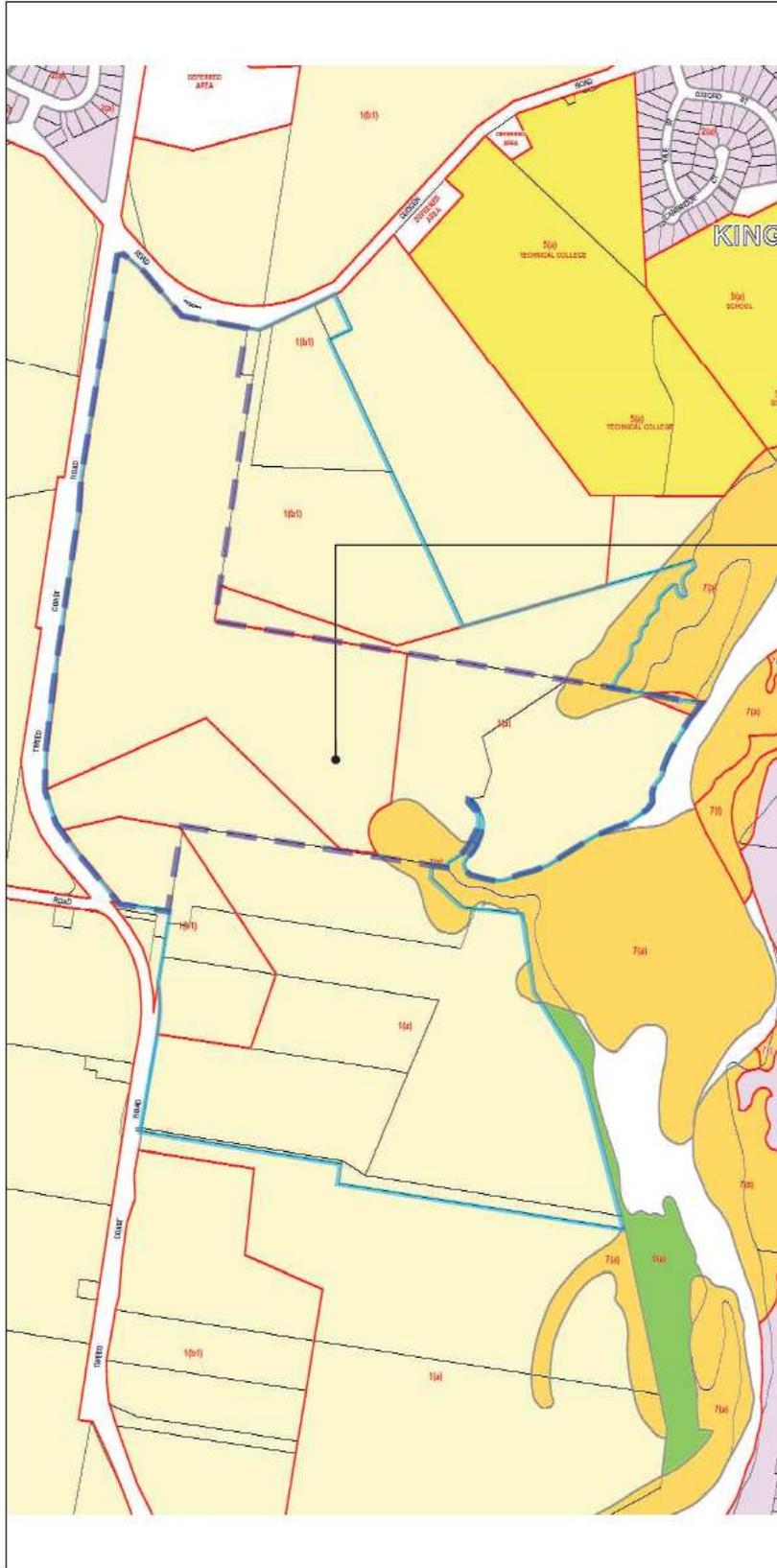
Crn. Tweed Coast Road & Cudgen Road - Cudgen

LOCATION

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 2068029\Graphics\ae_lot 330_13.cdr
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0 500 m

Fig 1



KEY

-  Subject Site
-  Land owned by Kingscliff Land Company P/L

Subject Site

LEGEND

- 1. RURAL**
 -  (a) RURAL
 -  (b1) AGRICULTURAL PROTECTION
 -  (b2) AGRICULTURAL PROTECTION
 -  (c) RURAL LIVING
- 2. RESIDENTIAL**
 -  (a) LOW DENSITY RESIDENTIAL
 -  (b) MEDIUM DENSITY RESIDENTIAL
 -  (c) URBAN EXPANSION
 -  (d) VILLAGE
 -  (e) RESIDENTIAL TOURIST
 -  (f) TOURISM
- 3. BUSINESS**
 -  (a) SUB-REGIONAL BUSINESS
 -  (b) GENERAL BUSINESS
 -  (c) COMMERCE & TRADE
 -  (d) WATERFRONT ENTERPRISE
 -  (e) SPECIAL TOURIST (Jack Evans Boat Harbour)
- 4. INDUSTRIAL**
 -  (a) INDUSTRIAL
- 5. SPECIAL USES**
 -  (a) SPECIAL USES (LOCAL AUTHORITY RESERVE (DECLARED BY RESOLUTION))
- 6. OPEN SPACE**
 -  (a) OPEN SPACE
 -  (b) RECREATION
- 7. ENVIRONMENTAL PROTECTION**
 -  (a) ENVIRONMENTAL PROTECTION (Wetlands & Littoral Rainforests)
 -  (b) ENVIRONMENTAL PROTECTION (Scenic / Escarpment)
 -  (c) ENVIRONMENTAL PROTECTION (Coastal Limits)
 -  (d) ENVIRONMENTAL PROTECTION (Habitat)
- 8. NATIONAL PARKS / NATURE RESERVES**
 -  (a) NATIONAL PARKS & NATURE RESERVES
- ADDITIONAL CONTROLS**
 -  CLAUSE 37 (TRANSMISSION LINE CORRIDOR)
 -  CLAUSE 38 (FUTURE ROADS)
 -  CLAUSE 41 (HERITAGE CONSERVATION AREA)
 -  CLAUSE 52 (KINGS BEACH / KINGS FOREST / OSPREY NEST)
 -  CLAUSE 52 (BLACK ROCKS)
 -  CLAUSE 52 (POTTSVILLE)
 -  CLAUSE 52 (STORMWATER AND FILL)
 -  CLAUSE 52 (COBARI LAKES)
 -  CLAUSE 52 (EXISTING AND FUTURE DAM ARRAYS)
 -  CLAUSE 53 (SCHEDULE 3 TIER)

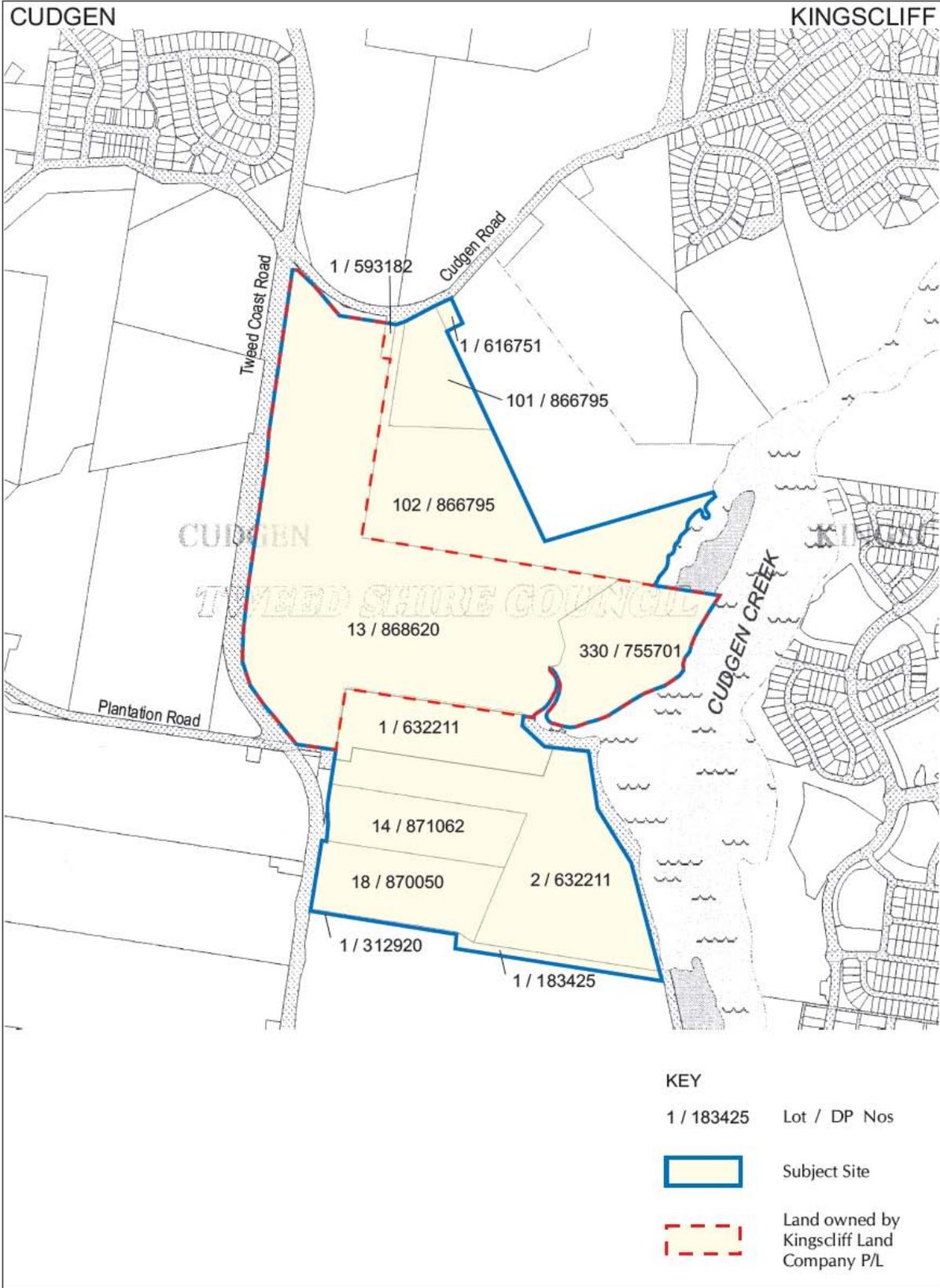
Crn. Tweed Coast Road & Cudgen Road - Cudgen

ZONING - TWEED LEP 2000

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Issued 30 Nov 06



Fig 2



Crn. Tweed Coast Road & Cudgen Road - Cudgen

LOT AND DP LAYOUT

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 2068029Graphics\ae_lot 330_13.cdr
 Issued 30 Nov 06



Fig 3

3 LOCAL CONTEXT

3.1 Surrounding Locality

The subject site is located approximately 1 km south west of Kingscliff on the NSW Far North Coast, adjacent to the Cudgen Plateau. The area surrounding the site is characterised by agricultural land interspersed with residential settlements. The site is bounded to the north by Cudgen Road with rural land and littoral forest beyond this. Tweed Coast Road forms the western boundary of the site, with land beyond this being designated as State Significant Farmland and used for small crops. The site is bounded by Cudgen Creek to the east and rural land to the south. Adjacent to the site lies Kingscliff TAFE to the north-east, residential development at Cudgen to the north-west, and recreational areas to the east. Farm land adjacent to the subject site is shown in Photos 2 and 3.



Photo 2: Agricultural land opposite the subject site, across Tweed Coast Road, forming part of the Cudgen Plateau



Photo 3: Land opposite the subject site used for growing fruit and vegetables

4 PROPOSED LEP AMENDMENT

The purpose of this Planning Report is to seek and secure an amendment to the Tweed LEP 2000 in respect of the subject land, to rezone the land from the existing zones to 2(c) Urban Expansion. Further, in respect of Tweed Shire Council's urban land release strategy (*Tweed Shire Council Residential Development Strategy as amended 1992*), this Report seeks re-endorsement of the inclusion of the subject land within the strategy as a 'secondary release area', and within any future land release strategies, to ensure its timely release for urban development.

The primary and secondary objectives of the proposed zone, 2(c) Urban Expansion, are as follows:

Primary objectives

- *to identify land for urban expansion (which will comprise mainly residential development focused on multi-use neighbourhood centres) and to ensure its optimum utilisation consistent with environmental constraints and the need to minimise residential landtake.*

Secondary objectives

- *to allow associated non-residential development which meets the recreation, shopping, commercial, employment and social needs of future residents.*
- *to ensure that sensitive environmental areas within and outside the zone are protected from any adverse impacts of development.*
- *to enable planning flexibility to achieve the other objectives of the zone by providing detailed guidelines through development control plans.*

5 STATUTORY CONSIDERATIONS

5.1 Agricultural Land Capability Assessment

An Agricultural Land Capability Assessment of the subject land has been carried out by Gilbert & Sutherland Pty Ltd, and is attached at Appendix 1 of this Report. This Assessment has been prepared in accordance with NSW Agriculture’s *Draft Individual Farm Assessment: A Guide to Agricultural Land Classification and Rural Planning Issues* methodology, using NSW Agriculture’s *Agricultural Land Classification* rural land classes. The comprehensive assessment involved constructing 20 boreholes from which soil samples were extracted for physical and chemical analysis, site observation, and a review of previous relevant site reports. The methodology used is described in more detail in Section 2 of the Gilbert & Sutherland Assessment.

Rural land classes, as provided by NSW Agriculture’s *Agricultural Land Classification*, are described in Table 1 below.

Table 1: Rural Land Classes

Class	Definition
Class 1	Arable land suitable for intensive cultivation where constraints to sustained high levels of agricultural production are minor or absent.
Class 2	Arable land suitable for regular cultivation for crops but not suited to continuous cultivation. It has moderate to high suitability for agriculture but edaphic (soil factors) or environmental constraints reduce the overall level of production and may limit the cropping phase to a rotation with sown pastures.
Class 3	Grazing land or land well suited to pasture improvement. It may be cropped in rotation with pasture. The overall production level is moderate because of edaphic or environmental constraints. Erosion hazard, soil structural breakdown or other factors including climate may limit the capacity for cultivation and soil conservation or drainage works may be required.
Class 4	Land suitable for grazing but not cultivation. Agriculture is based on native pastures or improved pastures established using minimum tillage techniques. Production may be seasonally high but the overall production level is low as a result of major environmental constraints.
Class 5	Land unsuitable for agriculture or at best suited only to light grazing. Agriculture production is very low or zero as a result of several constraints, including economic factors, which preclude land improvement.

Source: NSW Agriculture, *Agricultural Land Classification*

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Within the Northern Rivers Farmland Protection Project (NRFPP), agricultural land described as being 'very high quality and unique agricultural soils/lands' is classified as 'State Significant Farmland'. NRFPP mapping is generally based on soil landscape mapping and not on the *Agricultural Land Classification System* described above. More detailed definitions of State Significant Farmland are provided in Section 5.2 of this Report.

Despite the disparity in mapping systems, there appears to be a strong correlation between land identified as State Significant Farmland and land classed as 1(b) Agricultural Protection under the LEP 2000. Development Control Plan 51: Tweed Coast Strategy (DCP 51) notes that '*agricultural land is a very significant land use in the District and includes land of the highest ratings by NSW Agriculture- Classes 1 and 2...Council will retain the protection of the District's agricultural land ie. land currently zoned 1(b) Agricultural Protection ...*' (p36). As part of the subject land is identified in the NRFPP maps as State Significant Farmland, it is assumed that these areas can be classified as Class 1 or 2 under the Agricultural Land Classification System.

However, Gilbert & Sutherland's Agricultural Land Capability Assessment concluded that, while small fragmented pockets of reasonable quality agricultural land exist in the northern and south-western corners of the subject site, overall, the subject land is more suitably classified as Class 4 or 5 land. This classification is due to severe limitations in terms of the chemical and physical components of the soil and general terrain. Specifically, soil recovered from the site showed severe nutrient deficiencies, high nutrient leaching potential, some nutrient toxicity (namely iron toxicity), soil acidity, symptoms of sodicity, and shallow topsoils. In addition, the site is generally poorly drained and prone to seasonally wet soils, and there is a high risk of erosion of topsoils. The land was therefore assessed as being suitable for low density grazing but not for cultivation.

Considering the results of the Assessment, it is clear that the subject land has been incorrectly classified as 'very high quality and unique agricultural soils/lands' and therefore should not have been given the designation of State Significant Farmland. Given the proximity of the subject land to Kingscliff and associated services, and the growing need for housing in the region, it is considered that a far more productive use of the land would be to rezone it to allow for urban development.

5.2 Section 117 Direction by Minister - Direction No. 14 - Farmland of State and Regional Significance on the NSW Far North Coast

The objectives of this ministerial direction primarily seek to preserve prime agricultural land and prevent urban encroachment into farming areas. This direction applies to the NSW Far North Coast when a council prepares a draft local environmental plan for land mapped as State Significant Farmland, Regionally Significant Farmland, or Significant Non-contiguous Farmland as identified under the Northern Rivers Farmland Protection Project (NRFPP). The direction applies to this proposal as part of the subject land is identified as State Significant Farmland under the NRFPP, as discussed in Section 5.1 above.

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While the directions state that:

- (1) A draft local environmental plan shall not rezone land identified as “State Significant Farmland” for urban or rural residential purposes.*

Clause 4 of the directions provides that:

- (4) A draft LEP may be inconsistent with this direction only if council can satisfy the Director-General that:
 - (a) any particular provision or area should be varied or excluded having regard to the provisions of Section 5 of the Environmental Planning and Assessment Act, and*
 - (b) the draft LEP is consistent with Section 4 of the report titled “Northern Rivers Farmland Protection Project- Final Recommendations, February 2005”, as lodged in the Department of Planning.**

The Section 5 objectives of the *Environmental Planning and Assessment Act 1979* (the Act) relevant to this proposal are:

- (a) to encourage:
 - (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*
 - (ii) the promotion and co-ordination of the orderly and economic use and development of land,*
 - (iii) the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats, and*
 - (iv) ecologically sustainable development, and*
 - (v) the provision and maintenance of affordable housing.**

The proposal to rezone the subject land to allow for urban expansion is consistent with the provisions of Section 5 of the Act as it would better promote the proper management and development of resources. Rezoning would seek to benefit the social and economic welfare of the community more so than the current zoning, as the current zoning of the subject land is based on the incorrect designation of prime agricultural land. As discussed in the Agricultural Land Capability Assessment prepared by Gilbert & Sutherland (see Section 5.1 of this report), the subject site can appropriately be described as Class 4 or 5 agricultural land, and is only capable of light to moderate grazing, not cultivation, and can be expected to have a low overall production level. The zoning of this land as Rural 1(a) and Rural 1(b1) Agricultural

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Protection, and the consequent prevention of urban development of the land, is clearly not promoting the *'social and economic welfare of the community'*, nor the *'orderly and economic use and development of land'*. Considering the growing demand for housing in the region, allowing for urban expansion would be a far better use of the land both economically and socially. It would also contribute to providing affordable housing in the area.

The rural zoning of the subject land does not necessarily ensure that the natural environment will be protected. While it is recognised that *'the existence of significant farmland ... should not be taken to mean that vegetation and habitat values are secondary to agricultural values, or that land has to be used for agriculture'* (as provided in the Northern Rivers Farmland Protection Project), this in no way guarantees that environmental values will be protected on rural zoned land, and does not change the fact that rural zoned land is predominantly used for agriculture.

Both grazing and crop cultivation can have damaging consequences for the environment such as the erosion of topsoil, soil salination, and the leaching of fertilisers and pesticides into surface and groundwater, particularly if the land is poorly suited to agricultural uses and requires intensive management to increase productivity. To the east of the subject site exists Cudgen Creek, a SEPP 14 wetland, and considerable tracts of littoral forest, much of which is zoned Environmental Protection. This area would be extremely vulnerable to the impacts of agriculture particularly considering that the site drains to the east. Rezoning the subject site to 2(c) Urban Expansion would not jeopardise ecological values any more than the current zoning of the site, and may in fact reduce the risk of environmental degradation to adjacent areas of land. Like Rural 1(a) land, environmental facilities are permissible without consent on land zoned Urban Expansion and are therefore just as likely to be established under this zone. In addition, any urban development resultant from the rezoning of the subject site would adhere to ecologically sustainable development principles.

Section 4 of the *Northern Rivers Farmland Protection Project (NRFPP) - Final Recommendations February 2005* provides regional farmland objectives to guide decision making on development in farmland areas. The objectives relevant to this proposal are as follows:

1. *To recognise and conserve the best agricultural land in the region for current and future rural uses.*
2. *To prevent fragmentation, alienation and encroachment of the most important agricultural areas by land uses unrelated to agriculture and rural uses.*
3. *To keep options open for future generations to produce a range of agricultural goods throughout the region on allotment sizes which optimise production potential.*
4. *To protect agricultural land from development that may result in environmental degradation.*

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The NRFPP recommends a number of principles to implement farmland protection objectives. The principles relevant to this proposal are as follows:

- (a) *State significant farmland cannot be considered for urban (including housing, retailing and other uses normally located within towns) or rural residential rezoning. The only exception is where the land is identified in a council settlement strategy which has been agreed to between December 1994 and December 2004 under clauses 20 or 38 of the North Coast Regional Environmental Plan (or placed on public exhibition by the end of 2004 and subsequently approved). Councils when preparing new settlement strategies cannot consider state significant farmland for inclusion.*
- (b) *Where expansion of urban or rural residential zones towards farmland would create a potential conflict, such zones would not be permitted to the boundary of significant farmland. A suitable buffer must be provided outside the farmland area, designed to separate the residential zone from mapped farmland. The onus is on the developer of the encroaching residential zone to avoid conflict through the provision and maintenance of existing buffers, and acquisition of buffers must form part of the overall development.*

As has been demonstrated in Section 5.1 of this report, the subject land is of relatively low agricultural quality and therefore cannot be considered the best or most important agricultural land in the region. Accordingly, the NRFPP maps should be amended so that Section 117 Direction No. 14 will no longer apply to the land. As discussed in Section 5.1 of this report, the rezoning of the land to allow for urban development is unlikely to increase the risk of environmental degradation.

While the subject land has not been identified in a Council settlement strategy agreed to between December 1994 and December 2004, it is identified in Councils current urban land release strategy, the *Tweed Shire Residential Development Strategy as amended 1992* (see Section 5.8 of this report). At the time the current strategy was prepared, the subject land was earmarked for future urban release. It is therefore the misclassification of prime agricultural land, and State Significant Farmland, that prevents the subject site from now being considered for release as urban land.

Cudgen Road and Tweed Coast Road provide adequate buffers between the subject site and significant farmland to the north and west of the site. Where buffers do not exist between the subject site and significant farmland (namely to the north east and to the south of the subject site), vegetation can easily be planted to separate significant farmland from urban development arising from the proposed amendment.

Section 4 of the NRFPP also provides that strategic boundary review can be carried out on existing boundaries between State Significant Farmland and other rural land when Council is preparing a new rural residential strategy or a village expansion strategy. As the methodology used in the NRFPP only allows for a minimum mappable area of 40 hectares, there is a confidence limit of 150 metres for all boundaries. Considering that the subject site is mostly 'other rural land', and that the State Significant Farmland designation is restricted to the eastern and northern borders of the site where it seems to have spilled over from adjacent areas, it is feasible that the boundaries are, in this instance, not entirely accurate.

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As the basis of the NRFPP mapping was soil landscape mapping, entire soil landscapes were used to distinguish significant farmland areas. State Significant Farmland was identified by selecting soil landscapes which generally had the following attributes:

1. Slope generally less than 15%.
2. Consists predominantly of any of the following soil types:
 - Chocolate Soils
 - Euchrozems
 - Krasnozems
 - Some Grey, Brown and Red Clays
 - Black Earths
 - Chernozems
 - Prairie Soils
3. Soils are generally deeper than 1 metre.
4. Well drained landscape.
5. Rock outcrop less than 10%.
6. Flood free.
7. Not affected by other constraints/hazards either within the soil landscape or originating in adjoining soil landscapes (e.g.: run-on, mass movement, localised flooding).

The soil landscapes generally consistent with these criteria are:

- Wollongbar (wo)
- Wollongbar variant (woa)
- Cudgen (cu)
- Carool variant (caa)

The subject land has principally Cudgen (cu) soils and has therefore been designated as State Significant Farmland. However, the scale of soil landscape mapping does not allow for variations, such as shallowness of soils and particularly poor drainage, at the property scale to be taken into consideration. As has been discussed in Section 5.1 of this report, the agricultural land capability assessment prepared by Gilbert & Sutherland has confirmed that although the subject land predominantly comprises Cudgen soils, severe limitations such as poor drainage, steep slopes, and high erosion potential exist.

5.3 Section 117 Direction by Minister - Direction No. 6 - Coastal Protection

The objective of this ministerial direction seeks to protect the ecological, scenic and leisure value of the coast. This direction applies to land located within the NSW Coastal Zone as defined under *Coastal Protection Act 1979*, when a Council prepares a draft LEP that alters a zone or a provision relating to this land. The direction applies to the proposal as the subject land is located within the NSW coastal zone.

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Clause 1 of the directions state that a draft LEP shall:

- *Not alter, create or remove existing zonings*

However, Clause 2 provides that:

- *A draft LEP may be inconsistent with this direction only if council can satisfy the Director-General that any particular provision or area should be varied having regard to the provision of section 5 of the Environmental Planning and Assessment Act, and... the rezoning is, in the opinion of the Director-General, of a minor significance.*

The proposed rezoning is consistent with the provisions of Section 5 of the Act, which have been addressed in Section 5.2 of this Report. The rezoning of the subject land is considered to be of minor significance due to the fact that the current zoning of the land was based on its incorrect classification as prime agricultural land (see Section 5.1 of this report).

5.4 Section 117 Direction by Minister - Direction No. 25 – Site Specific Zoning

The objective of this ministerial direction is *'to make the range of uses permissible in zones as flexible as possible'*. This direction applies when a council prepares any draft LEP to allow a particular development proposal to be carried out. The directions relevant to this proposal state that:

(1) *A draft LEP that amends another environmental planning instrument in order to allow a particular development proposal to be carried out shall:*

- *rezone the site to an existing zone already applying in the environmental planning instrument that allows that land use without imposing any development standards or requirements in addition to those already contained in that zone.*

(2) *A draft LEP shall not contain or refer to drawings that show details of the development proposal.*

Although the proposed amendment is not for the purpose of allowing a particular development, the proposal is compatible with this ministerial direction, as it seeks to rezone the subject site to Residential 2(c) Urban Expansion, an existing zone within the Tweed LEP. This rezoning application does not seek to impose any further development controls that apply to the said zone. Furthermore, the proposal does not include or refer to any development plans intended for the subject land.

5.5 Draft Far North Coast Regional Strategy

The *Draft Far North Coast Regional Strategy* was prepared by the Department of Planning to guide local planning in the local government areas of Ballina, Byron, Kyogle, Lismore, Richmond Valley and Tweed. The purpose of the draft strategy is to manage expected growth of the region in a sustainable manner over the next 25 years.

Under the draft strategy, the subject land is identified as 'Environmental Assets and Rural Land', with a significant western portion being designated as State Significant Farmland. The strategy provides actions to protect land identified as Environmental Assets and Rural Land, which are as follows:

- *Prohibit local environmental plans from zoning land within the Environmental Assets and Rural Land area to permit urban purposes, other than rural residential development.*
- *Existing and future rural residential development will be located in this general area, but not where it conflicts or coincides with [State or Regionally Significant Farmland].*

While it is recognised that the proposed LEP amendment is inconsistent with these actions, it is considered that the amendment will seek to contribute to the overall purpose of the strategy, that is, to help accommodate future population growth in the region. The strategy envisages an influx of 60,400 people and 51,000 new homes into the area over the next 25 year period. As has been demonstrated in Section 5.1 of this report, the incorrect designation of the subject site as State Significant Farmland and the subsequent prevention of any urban development on the land prevent the most economic use of the land.

The basis of the State Significant Farmland designation is the Northern Rivers Farmland Protection Project, conducted in early 2005 by the NSW Department of Planning. The final recommendations of the NRFPP proposed planning principles for implementing the farmland maps. In relation to State Significant Farmland, the following recommendation was made:

State significant farmland cannot be considered for urban (including housing, retailing and other uses normally located within towns) or rural residential rezoning. The only exception is where the land is identified in a council settlement strategy which has been agreed to between December 1994 and December 2004 under clauses 20 or 38 of the North Coast Regional Environmental Plan (or placed on public exhibition by the end of 2004 and subsequently approved). Councils when preparing new settlement strategies cannot consider state significant farmland for inclusion.

As discussed in Sections 5.7 and 5.8 of this report, the subject land is included within Council's urban land release strategy *Tweed Shire Residential Development Strategy as amended 1992*, which remains the current strategy for the Shire. While the strategy was agreed to before 1994, there have been no amendments to the strategy to exclude the subject land. The NRFPP designation of State Significant Farmland to the subject land unjustifiably prevents the land from being included in any future land release strategies prepared by Council.

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5.6 Tweed Local Environmental Plan 2000

Clause 4 of *Tweed Local Environmental Plan 2000* (LEP) sets down the general aims of the LEP. Relevant to this proposal, the LEP aims:

(a) to give effect to the desired outcomes, strategic principles, policies and actions of the Tweed Shire 2000+ Strategic Plan which was adopted, after extensive community consultation, by the Council on 17 December 1996, the vision of which is:

“The management of growth so that the unique natural and developed character of the Tweed Shire is retained, and its economic vitality, ecological integrity and cultural fabric is enhanced”, and

(c) to give effect to and provide reference to... [Tweed Shire 2000+ Strategy] adopted by the Council.

(d) to encourage sustainable economic development of the area of Tweed compatible with the area’s environmental and residential amenity qualities.

The proposed rezoning of the site will help to enhance the economic vitality and sustainability of the region by providing development opportunities to landholders and much needed housing to current and future residents of the area.

Clause 5 of Tweed LEP 2000 provides that an objective of this plan is to ‘*promote development that is consistent with the four principles of ecologically sustainable development*’. The principles relevant to this proposal are as follows:

(a) the precautionary principle—namely, that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

In the application of the precautionary principle, public and private decisions should be guided by:

(i) careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment, and

(ii) an assessment of the risk-weighted consequences of various options, and

(b) inter-generational equity—namely, that the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations, and

(c) conservation of biological diversity and ecological integrity—namely, that conservation of biological diversity and ecological integrity should be a fundamental consideration.

The proposed amendment to the LEP and the likely associated loss of agricultural land does not defy the precautionary principle as the proposal is based on a comprehensive

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scientific analysis of the land. The proposal will not significantly impact on the availability of agricultural resources for future generations as it represents a very small portion of farmland in the region and its potential for long term sustainable agriculture is low. The rezoning of the land to 2(c) Urban Expansion will not have any more detrimental effects on the ecological integrity of the land and surrounds than the current zoning, as has been discussed in Section 5.2 of this report.

5.7 North Coast Regional Environmental Plan

Provisions relating to *Agricultural Resources* are contained in Part 2 Division 1 of the REP. The relevant associated policies for plan preparation are found in Clause 7 of the REP. Policies relevant to this proposal are as follows:

- (1) *A draft local environmental plan applying to prime crop or pasture land should:*
 - (a) *identify and include land in an agricultural protection zone and contain provisions that:*
 - (i) *prevent the subdivision of land within the zone for purposes other than commercial farming,*
 - (ii) *set minimum allotment sizes which maintain the concept of a minimum area capable of efficient, sustainable agricultural production in the long term,*
 - (iii) *separate land zoned for residential use from land zoned or used for agricultural use or for intensive animal industries, and*
 - (iv) *prohibit development which is incompatible with the objectives of this Division, and*
 - (v) *rezone prime crop or pasture land for purposes other than agricultural only after a detailed analysis of the agricultural capability of the land and adjoining land has been carried out.*

In accordance with Clause 7(v), a detailed analysis of the subject land has been carried out which verifies that the overall agricultural capability of the land is relatively low due to severe limitations and therefore is not 'prime crop or pasture land' (see section 5.1 of this report). The assessment concludes that a more logical boundary for such land is west of Tweed Coast Road and north of Cudgen Road.

Provisions relating to *Strategic Planning* are contained in Part 4 Division 1 of the REP. The relevant associated policies for plan preparation are found in Clause 7 of the REP, viz:

- (1) *The council should not prepare a draft local environmental plan which permits development that, in the opinion of the council (subject to the directions given by the Director), constitutes significant urban growth unless it has adopted an urban land release strategy for the whole of its local government area.*

- (2) *A draft local environmental plan referred to in subclause (1) should be generally consistent with the strategy referred to in that subclause.*

The relevant urban land release strategy that was adopted by Tweed Shire Council under the REP is the *Tweed Shire Council Residential Development Strategy as amended 1992*. Under Chapter 3 of the strategy, the subject site is identified as a potential release area (see Figure 6 in Chapter 3 'Land Release Options' of the strategy). The site is classed as a secondary release area which would most appropriately be used to 'round off' a suburb or village. At the time of writing the strategy, the subject site was zoned 1(d) Development Investigation. The zoning has obviously been reviewed since and is now predominantly Rural 1(a) and Rural 1(b) Agricultural Protection. Regardless of this, the proposed rezoning of the site to 2(c) Urban Expansion remains consistent with the current urban land release strategy. The proposal's consistency with the strategy is further discussed in Section 5.7 of this report.

5.8 Tweed Shire Council Residential Development Strategy

The *Tweed Shire Council Residential Development Strategy* was developed to provide for the long term housing needs of the Tweed Shire and the wider region. The strategy outlines an urban release pattern to accommodate future population growth and identifies a number of isolated release areas that are intended for urban development. The subject land was first earmarked as a 'potential release area' in the *Tweed Shire Residential Development Strategy 1987* and remains in the current strategy, the *Tweed Shire Council Residential Development Strategy as amended 1992*.

The 1992 strategy states that:

the areas [included within the strategy as potential release areas] have been identified as having some merit for consideration to accommodate the expected growth for this part of the Shire.

The strategy provides that:

It is generally desirable to have urban areas that can grow to at least a minimum population of 5000 to 7000. This is because such areas can provide a wide range of community and commercial services to its residential population without necessitating unnecessarily long travel distances. These criteria are met when new release areas are part of an area that can grow to the above mentioned size, or where additions are made to existing large urban areas... Areas not able to grow large enough to provide a wide array of commercial and community facilities are termed 'secondary release areas'.

The subject land is identified in the strategy as a secondary release area as it was not considered to be capable of accommodating a population of up to 5,000 persons. However, the subject site is located on the western fringe of Kingscliff, which ensures that any future urban development on the site will be able to utilise community and commercial facilities associated with the Kingscliff Township.

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From this, it is clear that the subject land, at the time of writing the strategy, was intended to be used for future urban expansion. As the strategy remains the current and valid urban land release strategy, it is the incorrect classification of the land as prime crop or pasture land that now prevents it from being considered as an urban land release area, and will prevent its inclusion in future land release strategies.

5.9 Development Control Plan No. 51- Tweed Coast Strategy

This Development Control Plan (DCP), adopted in December 2003, constitutes Tweed Shire Council's policies for the management of growth in the Kingscliff District and includes the subject land at Cudgen. The objectives, strategies and planning controls relevant to this rezoning application are found under Sections 4.2 and 7.8 of the DCP, 'Urban Development Areas' and 'Agricultural Land'. The relevant objective under Urban Development Areas is as follows:

Council will seek to ensure the beneficial use of all urban zoned land in the District is maximised, through such measures as housing densities and housing choice.

To implement this objective, the DCP provides that:

There will be no increase of urban expansion areas in the District unless it can be demonstrated that such expansion:

- *Would achieve the efficient use of existing infrastructure;*
- *Is capable of integration with an existing urban area; and*
- *Would meet other requirements of the Strategy & DCP.*

Under this objective, the proposed rezoning of the subject site to 2(c) Urban Expansion is justified as the site is located outside the western fringe of Kingscliff, adjacent to the Kingscliff TAFE, recreational areas, and residential development, and could easily utilise the existing infrastructure. Major access routes to the subject land exist via Tweed Coast Road and Cudgen Road, connecting it to Kingscliff and other settlements throughout the district. The proximity of the subject site to Kingscliff ensures that it would be capable of being integrated with the township.

The relevant planning strategy under *Agricultural Land* is as follows:

Council will retain the protection of the District's agricultural land ie. Land currently zoned 1(b) Agricultural Protection as a finite resource given its scenic value and ensure that it remains protected from any non-agricultural forms of development that conflict with agriculture.

While the proposed rezoning of the subject land is inconsistent with this particular strategy, DCP 51 also provides that '*agricultural land is a very significant land use in the District and includes land of the highest ratings by NSW Agriculture – Classes 1 and 2, which comprise only between 1% and 2% respectively of land in NSW*'. As has

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been demonstrated throughout Section 5.1 of this report and in the Agricultural Land Capability Assessment attached at Appendix 1, the subject land is suitably Class 4 or 5 agricultural land and therefore should not be considered as 'agricultural land', that is, '*land currently zoned 1(b)*'. Given that the subject site should never have been zoned 1(b) Agricultural Protection, it is justifiable to rezone the subject land to 2(c) Urban Expansion and allow for non-agricultural forms of development.

6 MERIT CONSIDERATIONS

There is a significant need for increased housing and associated commercial facilities within the Tweed Shire. The *Draft Far North Coast Regional Strategy* has planned for a population increase of approximately 73,000, by the year 2031. The greatest population increase is expected to be in the statistical local area of 'Tweed - Part A' which contains the urban areas of Kingscliff and Tweed Heads. This area is expected to increase by 80% to be approximately 85,000 persons in 2031 (DIPNR, 2004). As provided in the Draft Strategy, the growing population is expected to be accompanied by a reduction in household occupancy rates, further increasing the demand for housing. The subject land at Cudgen is ideally situated close to Kingscliff and is therefore extremely suitable for urban expansion of the Township. Given that population growth in the region is expected to be centred on this area, it would be ideal to allow urban development on the subject land.

Due to the fragmentation of lots classified as State Significant Farmland on the eastern side of Tweed Coast Road, and the lesser area of land designated State Significant Farmland compared to the western side of Tweed Coast Road, it can be considered that Tweed Coast Road forms a natural delineation for the limit of State Significant Farmland. Similarly, Cudgen Road forms a natural barrier between the subject site and State Significant Farmland to the north of the site. Significant farmland to the north and west of the subject site will be adequately buffered from any future urban development on the site. The rezoning of the land to allow urban expansion will therefore have no significant impact on the quality of the remaining land zoned Agricultural Protection surrounding the subject site.

7 CONCLUSIONS

As has been demonstrated throughout this report, the agricultural capability of the subject land is questionable due to severe limitations of the soil and topography. The Section 117 Ministerial Direction (Direction No. 14), and the NRFPP designation of State Significant Farmland, unfairly prevent any draft LEP to be prepared that allows urban development, and unjustifiably prevent the subject land from being considered for urban release in any future land release strategy. Given the proximity of Kingscliff and other residential settlements, and given the increasing need for housing in the region, a more economic and logical use of the land would be for urban expansion.

In view of the above, it is considered that the Director-General of Planning will have sufficient justification from the above inconsistencies to satisfy the requirements of Section 69 (1)(a) and (b) of the EP & A Act to enable a recommendation that a draft LEP, rezoning the land, be made to the Minister.

Accordingly, the Council is requested to resolve to:

- Rezone the subject land for Urban Expansion purposes, pursuant to Section 54 of the EP & A Act and to simultaneously re-endorse the subject site as being included in Council's urban land release strategy under Clause 38 of the NCREP to ensure the land's timely release, subject to demand and availability of appropriate services;
- Advise the NSW Department of Planning (DoP) of the Council's resolution to rezone the land and to simultaneously seek re-endorsement of the land as being included in its urban land release strategy under Clause 38 of the NCREP; and
- Forward to the DoP a copy of the Agricultural Land Capability Assessment by Gilbert & Sutherland and the above justifications for the inconsistencies with the NCREP and Section 117 Direction in support of the land's proposed rezoning.

8 BIBLIOGRAPHY

Department of Infrastructure, Planning and Natural Resources and Department of Primary Industries, *Northern Rivers Farmland Protection Project, Final Recommendations*, February 2005

Department of Infrastructure, Planning and Natural Resources, Transport and Population Data Centre, *NSW Statistical Area Population Projections 2001- 2031, 2004 Release*, 2004

Department of Planning, *Draft Far North Coast Regional Strategy 2006*

North Coast Regional Environmental Plan

Northern Rivers Area Consultative Committee, *Strategic Regional Plan 2004*

NSW Agriculture – *Agricultural Land Classification*, Agfact AC.25

NSW Coastal Policy

Section 117 Direction – *Direction No. 6 – Coastal Protection*

Section 117 Direction - *Direction No.14 – Farmland of State and Regional Significance on the NSW Far North Coast*

Section 117 Direction – *Direction No. 25 – Site Specific Zoning*

State Environmental Planning Policy 14 – Coastal Wetlands

Tweed Local Environmental Plan 2000

Tweed Shire Council, *Development Control Plan No.51 – Tweed Coast Strategy*

Tweed Shire Council, *Tweed Shire Residential Development Strategy as amended 1992*

APPENDIX 1: Agricultural Land Capability Assessment