

**TITLE: [PR-CM] Terranora Area E - Progress Report on Planning Processes**

**ORIGIN:**

**Planning Reforms**

**FILE NO: GT1/LEP/2000/10 Pt6**

**SUMMARY OF REPORT:**

The purpose of this report is to provide Council with an update on the various planning processes and recent actions that the major landowner Metricon Queensland Pty Ltd has taken to advance the redevelopment of the Terranora Area E site.

Terranora Area E has been recognised in recent decades by both Tweed Shire Council and the NSW Department of Planning as an important strategic site for urban land release and housing supply, catering for a potential, additional residential population of approximately 4,000 people.

In accordance with the Local Environmental Plan gazetted for this site in 2007, Council officers have been liaising with a Landowners group to advance the necessary detailed planning documents, a Development Control Plan and Section 94 Plan, in order to provide an appropriate framework for the future development of the site.

This process has been complicated to date by the lack of an agreed approach among the approximate 33 registered landowners, and the more recent decision by the major landowner, Metricon Queensland Pty Ltd, to lodge a Part 3A Major Projects application to the NSW Department of Planning to subdivide the eastern-most portion of Area E into 300 residential lots at Fraser Drive, Terranora, including the opening and construction of all proposed roads, construction of temporary intersection access to Fraser Drive, provision of underground reticulated water supply and sewerage, stormwater drainage and stormwater management facilities, provision of underground power and telephone service, and bulk earthworks. It should also be noted that the Landowners Group for the entire Area E site has recently been disbanded.

The Part 3A application was submitted without the prior consultation of Council, and the officers have identified with both the proponents and the Department of Planning serious concerns about the advancement of this proposal, without the coordinated planning and infrastructure framework of a Draft DCP and Section 94 Plan, providing little certainty that the development principles and agreements of the original rezoning will be adhered to. Of greater concern is the proponents' unresolved response to the (then) Minister for Planning's Direction under s94E of the EP&A Act 1979, dated 13 January, 2009, which mandated a \$20,000 cap that could be levied for Greenfield development sites under s94. It is evident from current estimates that the proposed Section 94 charges for the Area E site are likely to exceed \$35000 per lot, thereby clearly exceeding the \$20,000 cap. Council will recall that a request for an exemption to the cap specifically for Area E, was denied by the Minister on 10 July 2009. This is significant in the progression of the Area E development as it relates to the feasibility of a key infrastructure development at the site. These concerns have been documented through an initial submission to the Department of Planning earlier this year.

It is therefore considered an imperative for Council officers to continue to liaise with both the NSW Department of Planning and Metricon and seek the deferral of consideration of the current Part 3A Major Projects application, until a Council endorsed position has been reached on a new Draft DCP and Section 94 Plan for the entire Area E site has been reached. The officers will continue to keep Council informed of the progress of this liaison.

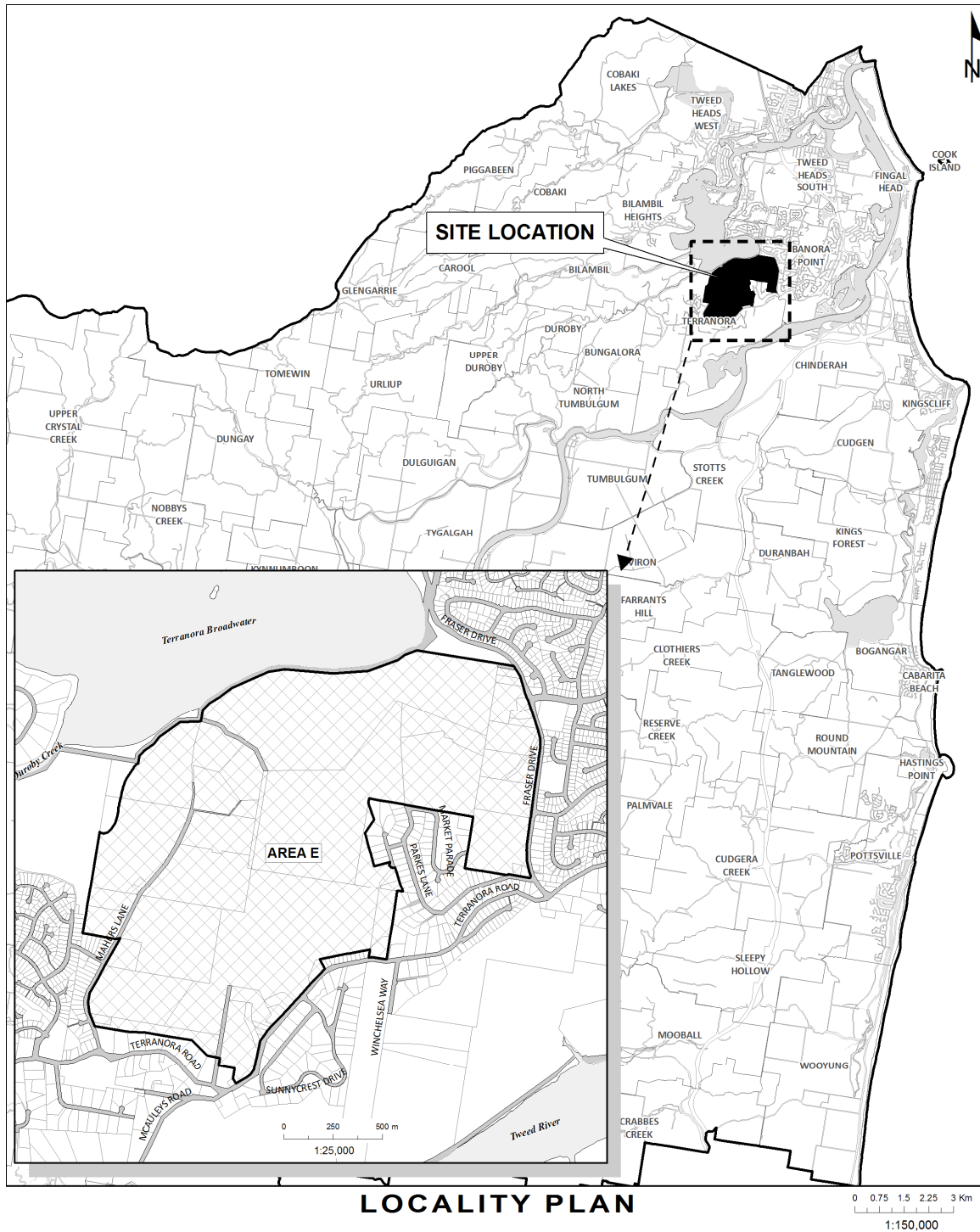
**RECOMMENDATION:**

**That:**

- 1. The report on Terranora Area E – Progress Report on Planning Processes be received and noted; and**
- 2. Council endorses the General Manager to write to the Director-General of the NSW Department of Planning requesting a deferral of any further consideration of the current Part 3A Major Projects application for a 300 lot residential subdivision on the eastern-most section of the Terranora Area E site, until the Council and the applicants, Metricon Queensland Pty Ltd have satisfactorily resolved the details of a new Draft Development Control Plan and Draft Section 94 Plan for the entire Area E site.**

**REPORT:**

**SITE PLAN:**



**LOCALITY PLAN**

**AREA E  
Terranora**

Filename: z:\esri\planning\mxd\A4P\_B&W SitePlan.mxd

Author: J.Batchelor - Planning Reforms Unit

Date Printed: 04 May, 2010

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Coordinate System - MGA Zone 56  
Datum - GDA 94

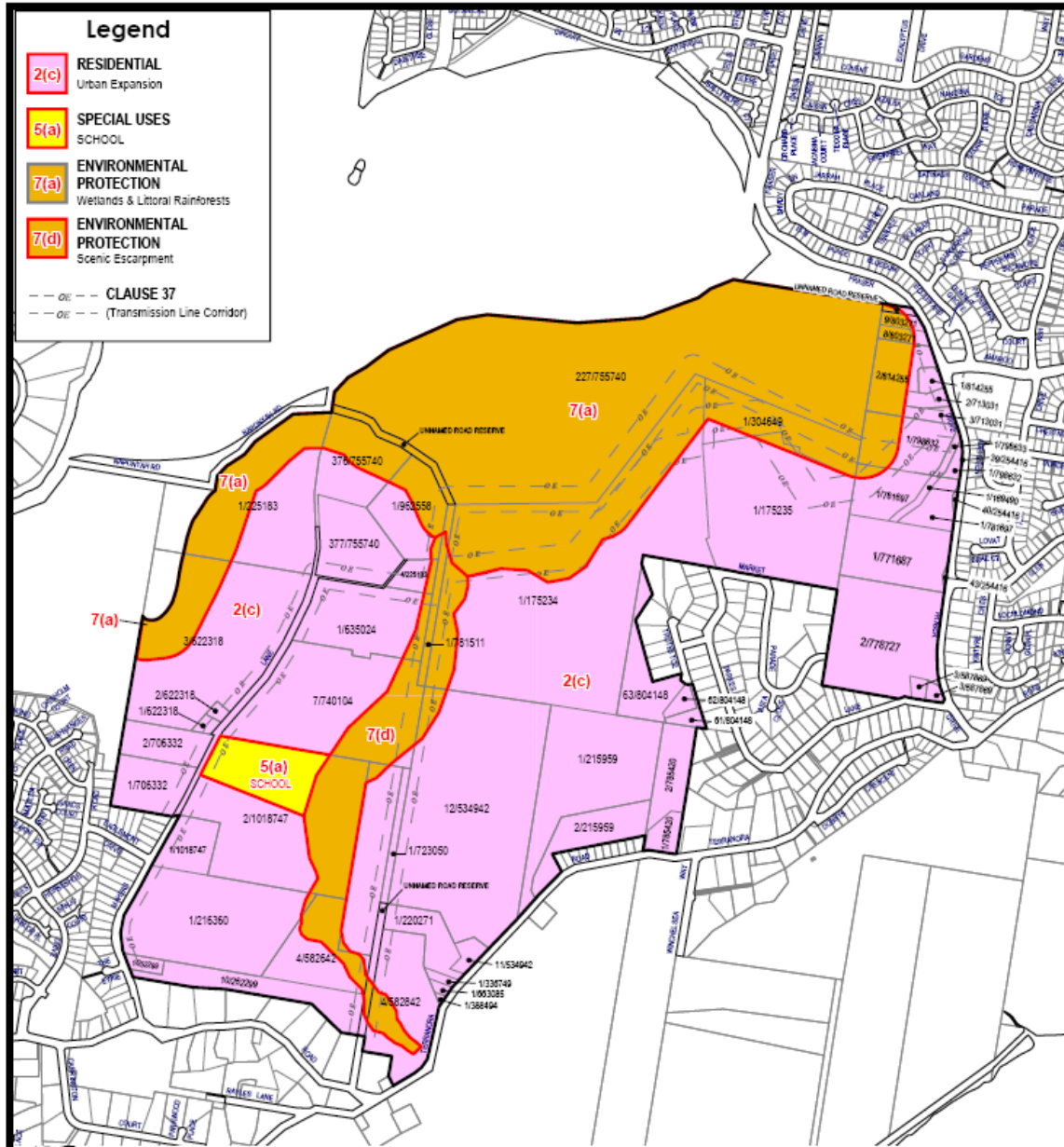
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**TWEED**  
SHIRE COUNCIL

**LEP ZONING MAP:**



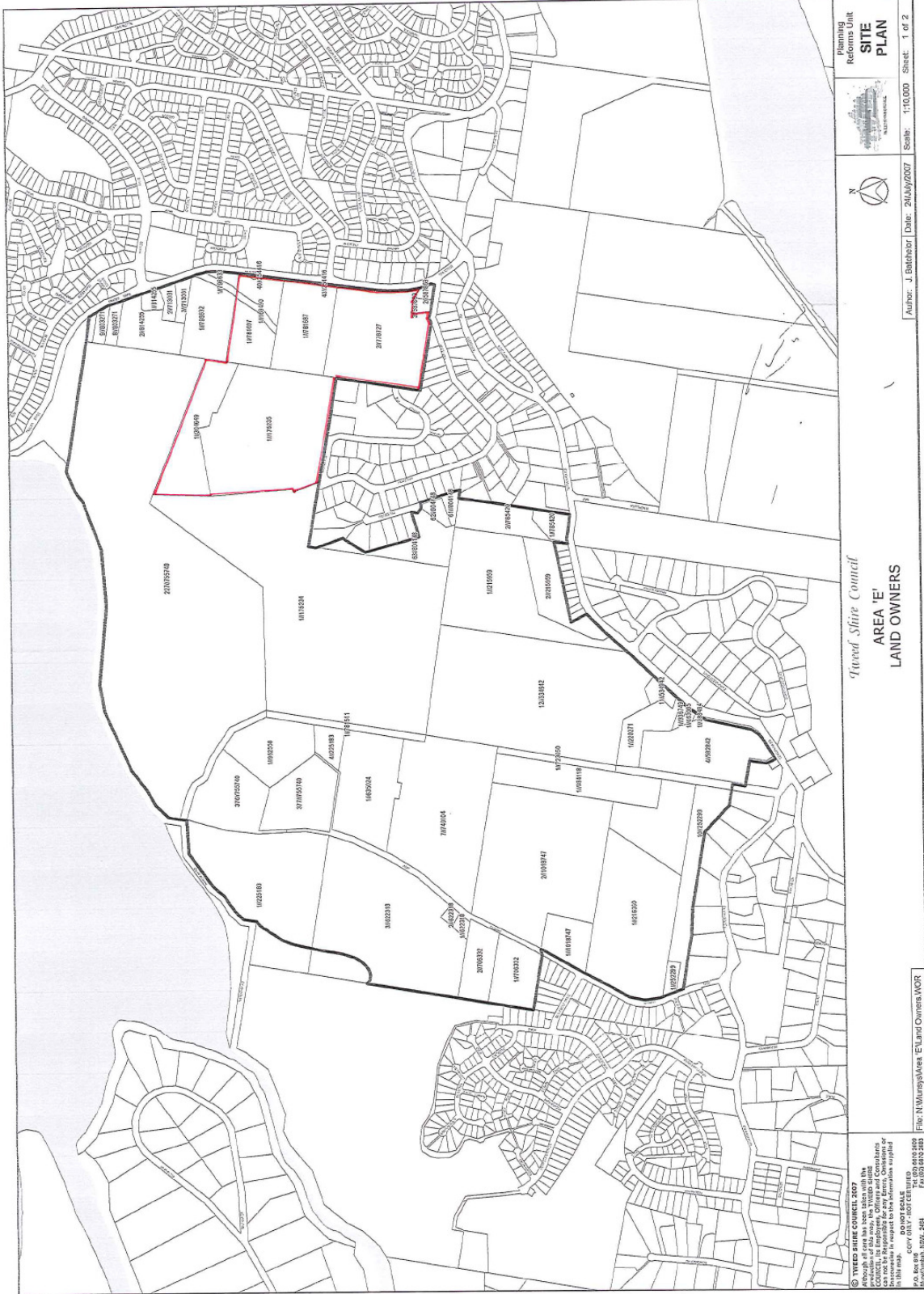
SCALE: 1:15,000    LOCALITY: TERRANORA    PARISH: TERRANORA    COUNTY: ROUS    SHEET: 1 of 1

ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979  
**TWEED**  
**DRAFT LOCAL ENVIRONMENTAL PLAN 2000 AMENDMENT No. 10**

DRAWN BY:	J. Batchelor	DATE:	07/10/2004
SUPERVISING DRAFTER:			
PLANNING OFFICER:	Eber Butron		
COUNCIL FILE No.	GTI/LEP/2000/10		
DEPT. FILE No.:	G94/00396		
GOVT. GAZETTE OF:			

STATEMENT OF RELATIONSHIP WITH OTHER PLANS
AMENDS: TWEED LOCAL ENVIRONMENTAL PLAN 2000
CERTIFIED IN ACCORDANCE WITH THE ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979, AND REGULATIONS
13/03/2006 GENERAL MANAGER    DATE

# LANDOWNERS MAP:



Planning  
Reforms Unit  
**SITE  
PLAN**



Author: J. Balthazar | Date: 24/09/2007 | Scale: 1:10,000 | Sheet: 1 of 2

*Quevedo Shire Council*  
**AREA 1E'  
LAND OWNERS**

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File: N:\Murray\Area E\Land Owners\WOT

## BACKGROUND

Area E is a greenfield development area located in Terranora, bounded generally by Mahers Lane, Terranora Road, Fraser Drive and the Terranora Broadwater to the north.

The site was rezoned from Rural 1(b)1 Agricultural Protection, 7(a) Environmental Protection (wetlands and littoral rainforest), 5(a) Special Uses (School) to a mix of 2(c) Urban Expansion, 7(d) Environmental Project/Scenic Escarpment and 7(a) Environmental Protection (Wetlands and Littoral Rainforests). The rezoning of this land was gazetted by the Minister for Planning on 27 October 2007.

There are approximately 33 registered landowners owning parcels within the Area E development boundary.

A comprehensive Local Environmental Study (LES) was prepared in 2004 to support the rezoning of land and inform the Amendment of Tweed Local Environmental Plan (TLEP) 2000. This document was the last document to be formally adopted to guide the development of Area E and set a framework for matters to be considered at a later stage in the development process and informed the drafting of Clause 53D of TLEP 2000.

The LES and Clause 53D require the following:

- the preparation of a structure plan, the overall framework for coordinated development of the area;
- a development control plan to encapsulate specific design and development requirements for the site. The Development Control Plan (DCP) is to be based on the structure plan and any specific requirements of the LES;
- a Section 94 plan as Area E has specific infrastructure, drainage, open space, roads and facility requirements to ensure it that it can develop in a manner which protects the environment and the needs of the wider community. At the time of drafting the LES the NSW Environmental Planning and Assessment Act 1979 allowed Council to develop plans to allow developer contributions to be collected to fund these facilities and infrastructure; and
- specific consideration of stormwater management, wetland restoration and management and contaminated lands.

Due to a limitation of Council staff resources at the time, it was agreed that a Landowners Group would fund consultants to prepare the required documents to progress the development of Area E. As such, a series of documents were submitted for peer review over time as follows:

- DCP, including Conceptual Structure Plan – February 2008
- Habitat Management, Wetlands Restoration Plan & Stormwater Quality Report – December 2008
- Section 94 Contributions Plan – February 2009

A further decision was made in mid 2009 for Council's Planning Reforms Unit to take over the preparation of a new Development Control Plan and Section 94 Plan for the Area E site. Council officers have been liaising with the Landowners Group and the

major owner, Metricon Queensland Pty Ltd, in finalising these documents. Drafts of the documents are expected to be reported to Council to seek endorsement for public exhibition in July this year.

On 13 January 2009, the (then) Minister for Planning issued a Direction under s94E of the Environmental Planning and Assessment Act (EP&A Act) 1979. This State wide direction mandated a cap that could be levied per lot under Section 94. Whilst Council had requested an exemption to the cap specifically for Area E, the Minister denied this request on 10 July 2009. This is significant in the progression of the Area E development as it relates to the feasibility of a key infrastructure development at the site.

### **Key Issues and Concerns**

The following section provides an overview of the main site constraints and planning issues relating to the Area E site.

#### Need for a Holistic and Comprehensive Planning Framework

The highly fragmented ownership pattern has posed a significant challenge to the coordination, planning and delivery of key infrastructure such as roads, sewer and water, on the Area E site. It is critical that the feasibility, design, location and staging of this infrastructure (and subsequent delivery) is appropriately planned and underpinned by a robust structure plan, development control plan and accompanying Section 94 plan. Given the length of time since the initial planning for this site was carried out, it also is important that Council, ALL of the Area E landowners and the local community are now properly consulted with, and have input to the detailed planning and infrastructure elements of these plans.

An initial structure plan and Draft DCP and Section 94 Plan were prepared by the Area E Landowners Group and submitted to Council in February 2008 and February 2009 respectively. However, due to the lack of sufficient supporting, technical information, and significant departures from the original Local Environmental Study, and various subdivision and planning controls, it was decided that Council's Planning Reforms Unit would take over the preparation of these plans. Council officers have been liaising with the Landowners Group and the major owner, Metricon Queensland Pty Ltd, in finalising these documents. Drafts of the documents are expected to be reported to Council to seek endorsement for public exhibition in July this year.

Best practice planning is the development of a 'whole of site' structure plan providing a coherent well planned strategic direction. On a site such as Area E, the whole of site structure plan should take into account the complex interplay of environmental constraints, site analysis, best use of developable land in terms of rationalising infrastructure and achieving appropriate yields, density and building types and staging for development. A DCP would subsequently bolster the structure plan by identifying such things as, but not limited to, housing and mixed use typologies and appropriate structural systems, and how these may relate to the site condition of slope, aspect and orientation. Best practice dictates this be done for the whole of site to full understand potential yield and best use of most appropriate land against environmental constraint.

A review of some key issues below highlights overarching constraint in the development of Area E in a manner which is sustainable, equitable and viable for Council and the wider community. These challenges are highlighted to inform Council of the necessity to

ensure that a development site such as this from the outset has agreed desired outcomes and established critical steps in the planning process to achieve these steps. Further, benchmarks need to be established to guarantee relevant steps are completed sequentially and in accordance with relevant budgetary considerations.

#### Feasibility of Trunk Infrastructure and Broadwater Parkway

Area E is a complex site given fragmented ownership of land and the intertwined relationship of on site constraints. Principally, location, design, connection and construction of the trunk road, known as Broadwater Parkway is critical to the development of Area E. It is considered that the feasibility of this road should be finalised as part of the overall DCP and Structure planning process to guide the overall development of Area E. The location of this road over certain parts of the site, particularly in the north eastern corner (Fraser Drive connection) is to be the subject of further assessment, both engineering and ecological and is likely to require acquisition of further land from landowners not connected to the development proposal. The resultant location is likely to result in the requirement for land acquisition. The holistic planning of Area E is dependant on the Broadwater Parkway feasibility, finalised in the DCP to the satisfaction of Council. In the same manner as the Broadwater Parkway, other trunk infrastructure needs careful strategic site planning, underpinned by a robust structure plan for the site which identifies site constraint, developable areas and adequately estimates yield for the entire development area.

#### Stormwater Management and the significance of Lot 227 DP 755740

Stormwater management is highlighted as a significant challenge within the Area E development area. The previous LES identified the challenges and preliminary management requirements for holistic stormwater at the site. At present, it is the opinion of Council staff that Lot 227, the large lot (accommodating a SEPP 14 wetland) on the boundary of Terranora Broadwater (currently in third party ownership) remains the only feasible discharge point, and therefore represents significant challenges for management of stormwater quality and quantity (location, design, capacity of treatment trains, retention basins, constructed wetlands), lawful point of discharge and also contemporary requirements for water quality in the Terranora Broadwater, the eventual location of discharged stormwater.

Further, the LES identified that wetlands on site provide breeding habitat for salt marsh mosquitos which unless managed will impact on the desirability of residential development in the area. The LES purports that the wetlands need to be rehabilitated and restored to a freshwater regime to limit salt marsh mosquito breeding habitat. It further states on page 239 (within part 6.3.2 – Land Use Option 2 – Urban Development) that *“Given the benefit to the whole of the area this should be addressed and funded by all developers within the area.”* The ‘Landowners Group’ have prepared a ‘Wetland Restoration Plan and associated Habitat Restoration Plan (dated December 2008) which has yet to be reported to or endorsed by Council as being the agreed mechanism for restoration, rehabilitation and ongoing management and monitoring at the site.

#### Section 94 Contributions Planning

Pursuant to s.94 of the Environmental Planning and Assessment Act 1979, Council may require development contributions (cash or in kind) for services or infrastructure subject



to the approval of a contributions plan. Council administers on behalf of land owners / developers the assignment or apportionment of responsibilities for works in local areas.

A requirement of Clause 53D of TLEP 2000 was that a s.94 Contributions plan be prepared prior to development occurring within the Area E site. A site specific s.94 plan was required for Area E to levy for the following: structured public open space, casual public open space, wetland acquisition and restoration, habitat acquisition and restoration, community buildings, cycleway/walkways and stormwater management Council administers on behalf of land owners/developers the assignment or apportionment of responsibilities for works in local areas.

In regard to road infrastructure, the LES identifies that, at the time of rezoning, the Tweed Road Contribution Plan (TRCP) enabled Council to levy Section 94 contributions for the provision of additional road capacity to service increased traffic loading as a result of urban growth and/or developer demands. Area E is considered to be within Local Area Contribution 1 of TRCP. TRCP now prescribes that work items 126-132 are to be totally funded by 'new' development, as works are not required by the broader community. *'The determination of the Local Area Contribution is purely administrative, to allow Council to share local costs between developers. That is, Council would not manage localised situations, if it meant funding or acting as a banker to the release area.'*

The plan also identifies a number of other road works in the Tweed area which will be impacted upon by traffic generated by Area E.

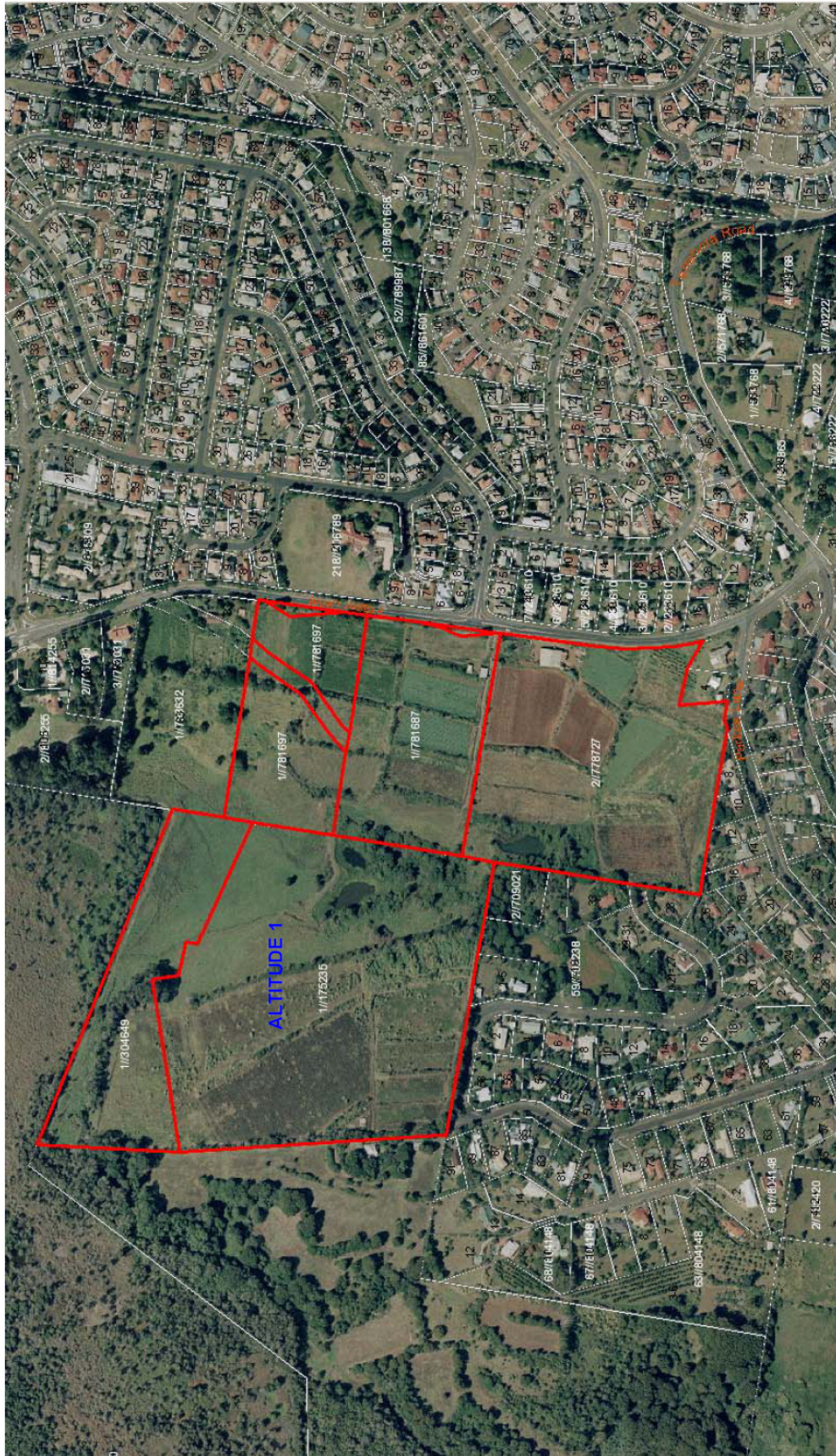
A site specific Section 94 plan was submitted to Council in February 2009 by the Landowners Group. This document was not exhibited and has not been adopted by Council. A Direction under Section 94E of the EP&A Act 1979 was issued by the Minister for Planning on 13 January 2009. This direction mandated a cap of \$20,000 per lot maximum levy per property under Section 94 contributions planning. Tweed Council lodged an application for approval for exemption to the cap for a number of areas, including Area E on 2 March 2009. However on 10 July 2009, the Minister decided not to approve the exemption for Area E. Currently normal Section 94 fees for Area E are around \$21,000 and exceed the \$20,000 cap. The site specific Section 94 fees for works mandated by the LEP and LES exceed another \$14,000 per lot.

Prior to progression of the Area E development, it is imperative that the requirement for this cap is discussed further with the Department of Planning. As highlighted, there are extenuating circumstances surrounding the Area E development, which if not planned appropriately are likely to result in unsustainable and inequitable pressure on the wider community should funding mechanisms for development prove inadequate.

#### Land Acquisition:

A number of concerns relating to the relationship of the proposed road system and possible need for acquisition of private properties has been identified with Metricon Queensland Pty Ltd.

**PART 3A APPLICATION AREA:**



### Part 3A Application: Altitude 1 Area E

Mettricon Queensland Pty Ltd lodged a Part 3A Major Project Application with the Department of Planning in October 2009. The proposal is to subdivide land into 300 residential lots at Fraser Drive, Terranora, and provide normal urban infrastructure together with the dedication of open space areas. Key elements of this project include opening and construction of all proposed roads, construction of temporary intersection access to Fraser Drive, provision of underground reticulated water supply and sewerage, stormwater drainage and stormwater management facilities, provision of underground power and telephone service, and bulk earthworks.

In preparing a response to Director-General requirements, Council officers outlined their view that the ad-hoc, out of sequence development should not be supported. The other principal issues identified were:

- Temporary connection to Fraser Drive and lack of certainty surrounding the future Broadwater Parkway design, location, construction by others, including necessity to involve other landowners depending on final alignment. It is the Officers' view that it is the responsibility of the applicant to dedicate the road reserve and provide detailed design for the remainder of Broadwater Parkway to the western extent of Area E;
- Requires whole of site structure plan providing a coherent well planned, strategic direction rather than a piecemeal consideration of one component, must ensure concept plan yields must be finalised in order to set strategic direction;
- A number of urban design issues pertaining neighbourhood facilities, orientation and design of lots, slope sensitive building design;
- Demonstration of compliance with bulk earthwork criteria contained in Tweed DCP part A5 – Subdivision Manual, Development Design Specification D6 – Site Regrading and Development Design Specification D1 – Road Design. Further, concern regarding lot grades and implications for building design in accordance with Tweed DCP part A1 – Residential and Tourist Design Code;
- Water and Sewer supply and capacity implications;
- Contamination investigation and necessary remediation;
- Subdivision discharges its stormwater via central drainage reserve onto private land (Lot 227 DP 755740). Applicant must demonstrate that this is a lawful point of discharge for stormwater, by obtaining owners consent or creating easements. Applicant must demonstrate that stormwater discharge onto lot 227, which contains SEPP 14 wetlands, is suitable in terms of water quality and quantity;
- Environmental issues, including flora and fauna assessment, wetland management, environmental areas management; and

- Connection with overarching s94 implications and feasibility of design and delivery trunk infrastructure. Ad hoc – out of sequence developments, planning should be coordinated with the provision of future road networks, access points, coordinated stormwater treatment etc.

## **Conclusion**

This report highlights some of the key challenges surrounding the development of Area E. It is highlighted that a holistic planning approach is preferred to ensure the most appropriate form of development at the site, in its entirety. Critically, the progression of the Area E development revolves around the feasibility of a key infrastructure development at the site. To progress with the Part 3A application without finalising these issues is considered undesirable and as such, these concerns have been documented through an initial submission to the Department of Planning.

A holistic planning approach to the development of Area E is necessary to underpin and work through the key issues on site and for the wider community. This work is being undertaken by Council staff. In addition, it is therefore considered an imperative for Council officers to continue to liaise with both the NSW Department of Planning and Metricon and seek the deferral of consideration of the current Part 3A Major Projects application, until a Council endorsed position has been reached on a new Draft DCP and Section 94 Plan for the entire Area E site. The officers will continue to keep Council informed of the progress of this liaison.

## **LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

It is a financial imperative for Council to establish an agreement from the NSW State Government that the \$20,000 per lot can be exceeded for the Area E site. Any failure to achieve this agreement is likely to have major implications for the financial viability of providing suitable public infrastructure for the future redevelopment of this site.

## **POLICY IMPLICATIONS:**

The redevelopment of Terranora Area E needs to be underpinned by comprehensive and sound planning and infrastructure principles. It is essential for Council to put into place a new Development Control Plan and Section 94 Plan for Area E, prior to any further advancement of major development proposals for the site.

## **UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "**non confidential**" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) (from 8.00pm Wednesday the week before the meeting) or visit Council's offices at Tweed Heads or Murwillumbah (from 8.00am Thursday the week before the meeting) or Council's libraries (from 10.00am Thursday the week of the meeting).*

Nil.

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