

TWEED SHIRE COUNCIL MEETING HELD WEDNESDAY 3 SEPTEMBER 2003

*Reports from Director Development Services***3. ORIGIN:** Strategic Town Planning Unit**FILE REF:** GT1/LEP/2000/44 Pt1; LEP/2000/44; LN 18879**REPORT TITLE:****Exhibition of Draft Tweed Local Environmental Plan 2000 (Amendment No 44) - Creek Street, Hastings Point****SUMMARY OF REPORT:**

Council, at its meeting of 20 November 2002, resolved to prepare an Environmental Study and a draft Local Environmental Plan for part Lot 156, DP 628026, Creek Street, Hastings Point, to rezone part of the Lot from 2(c) Residential Tourist Zone to 7(a) Environmental Protection (Wetland/Littoral Rainforest) Zone. After consultation with PlanningNSW and other relevant State Agencies Council completed and exhibited the Environmental Study and draft Local Environmental Plan (Figure 1) in May/June 2003. During the exhibition of the draft Plan Council received submissions from the NSW National Parks & Wildlife Service, NSW Coastal Council, NSW Fisheries, 19 letters from individuals and a petition containing 124 signatures. ~~The majority of the submissions (14 letters and 1 petition) either supported the draft Plan or requested that the 7(a) Wetland zone be expanded to include a 50 metre buffer to the wetland.~~ Submissions objecting to the draft Plan (7 letters) included an objection from the landowner and a planning consultant acting on their behalf.

Based on a review of the submissions, it has been recommended that the exhibited draft Plan be amended to increase the 7(a) zone and insert new provisions into the LEP on biting midge/mosquitoes and consultation with State Agencies as outlined in the conclusions of this report.

**RECOMMENDATION:**

That Council:

1. Adopts the amended draft Tweed Local Environmental Plan 2000 (Amendment 44) zone map as shown in Figure 3 and amends the Written Instrument, as follows:

Amend Clause 31 Development adjoining waterbodies

Insert new objective in Clause 31(1):

- *"To minimise the impact on development from known biting midge and mosquito breeding areas".*

Insert Clause 31(3)(e):

- "(e) it has considered the likely impact of biting midge and mosquitoes on the residents and tourists and the measures to be used to ameliorate the identified impacts".*

Amend Clause 25 by inserting Clause 25(4):

- "(4) The consent authority must not grant consent to development (other than for the purpose of agriculture or a home business) on land within Zone 7(a) without having regard to any representation made by NSW Fisheries and the NSW National Parks & Wildlife Service";*

0.28/la

0.19096 local space

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2. Forwards the adopted draft Plan to the Department of Infrastructure, Planning and Natural Resources under Section 68 of the Environmental Planning and Assessment Act with a request that the Minister make the Plan.

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### **REPORT:**

#### **BACKGROUND**

Council, at its meeting of 20 November 2002, resolved to prepare an Environmental Study and a draft Local Environmental Plan for part Lot 156, DP 628026, Creek Street, Hastings Point, to rezone part of the Lot from 2(e) Residential Tourist Zone to 7(a) Environmental Protection (Wetland/Littoral Rainforest) Zone.

Council consulted PlanningNSW (Department of Infrastructure, Planning and Natural Resources) and five other State agencies/bodies under Section 62 and 34A of the Act.

- NSW Rural Fire Service;
- NSW Fisheries;
- NSW National Parks & Wildlife Service;
- NSW Coastal Council;
- Department of Land and Water Conservation (now Department of Infrastructure, Planning and Natural Resources).

A summary of the Section 62 and 34A responses from these agencies and bodies is outlined in Table 1.

**Table 1 – Responses from Authorities Consulted**

Authority Date of Response	Summary of Issues
PlanningNSW 16/12/02	<ul style="list-style-type: none"> <li>• Environmental Study required.</li> <li>• Issues in Council report 20/11/02 appropriate for inclusion in Study.</li> <li>• Council to address relevant issues listed in Clause 8 – SEPP 71.</li> </ul>
NSW Rural Fire Service 31/12/02	<ul style="list-style-type: none"> <li>• Acknowledgment letter but no other response received.</li> </ul>
NSW Fisheries 7/1/03	<ul style="list-style-type: none"> <li>• Support the rezoning of land from 2(c) to 7(a).</li> <li>• Expanding the area to be rezoned to establish a 50 metre buffer between Cudgera Creek is strongly recommended and should be investigated in the Environmental Study.</li> <li>• If the land is rezoned a Management Plan should be established to outline appropriate management of the site. Options for management can be detailed in the Environmental Study.</li> </ul>
NSW National Parks & Wildlife Service 8/1/03	<ul style="list-style-type: none"> <li>• The zoning part of Lot 156 to 7(a) Environmental Protection is strongly supported. The site is part of</li> </ul>

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Authority Date of Response	Summary of Issues
	<p>the Christies Creek/Cudgen Creek estuarine ecosystem.</p> <ul style="list-style-type: none"> <li>• NPWS position is that a 50 metre buffer should be provided between wetlands and any form of development. Recommended that an appropriate buffer be included in the Environmental Protection Zone. Study should make recommendations on buffer width to be included in 7(a) zone.</li> <li>• The Environmental Study should consider impact of constructed environments on wildlife movement and usage of this habitat.</li> <li>• Study should consider surrounding area so that ecosystems can be considered as a whole.</li> <li>• Bird species protected under JAMBA have been recorded from estuary in close proximity to the site. Mangroves and/or saltmarsh provide roosting and feeding habitat for these and other shorebird species.</li> <li>• Shorebird species are quickly stressed by human disturbance or disturbance by domestic animals.</li> <li>• The site is part of a regional wildlife corridor modelled by the NPWS.</li> <li>• Rehabilitation of degraded sections of the existing 7(a) zone as well as the proposed addition could be explored by the Environmental Study.</li> <li>• Future development of the remaining part of Lot 156 should also consider the value of re-establishing connectivity across the site from Cudgen Nature Reserve to the eastern estuarine system.</li> <li>• Recommend area of creek upstream from the proposed addition be zoned 7(a).</li> <li>• Recommend that 7(a) zone along Christies Creek (less than 10m wide) be amended to provide the same width buffer between mangrove/riparian vegetation and the 2(e) zone.</li> <li>• Recommend that an Aboriginal Cultural Heritage Survey be undertaken of the subject site and its surrounds to identify any Aboriginal Cultural Heritage issues which may be relevant to the zoning</li> </ul>

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Authority Date of Response	Summary of Issues
	and any future development on the adjacent part of Lot 156.
NSW Coastal Council 9/1/03	<ul style="list-style-type: none"> <li>Supports resolution to prepare draft Plan to rezone from 2(c) Residential/Tourist to 7(a) Wetland/Littoral Rainforest.</li> </ul>
Department of Land and Water Conservation 17/2/03	<ul style="list-style-type: none"> <li>Department is supportive of the proposal to rezone those areas with mangroves and saltmarsh to 7(a) Wetland/Littoral Rainforest.</li> <li>Suggested that the proposed draft Plan and Environmental Study be expanded to encompass the foreshore along Lot 156 and investigate the appropriateness or otherwise of including those lands in the 7(a) zone.</li> </ul>

The Environmental Study and draft LEP were placed on public exhibition between 28 May 2003 and 30 June 2003 in accordance with the EP&A Act 1979. The draft zone map proposed rezoning areas of estuarine and wetland vegetation and a 10-20 metre buffer zone from 2(c) Residential/Tourist Zone. This buffer was acknowledged as being inconsistent with the 50 metre buffer zone recommended by NSW NPWS and NSW Fisheries. Reasons for not adopting the 50 metre buffer were also outlined in the Study. This issue is further discussed in the review of submissions.

### REVIEW OF SUBMISSIONS

During the public exhibition of the Environmental Study and draft LEP Council received submissions from the following:

- NSW National Parks & Wildlife Service;
- NSW Fisheries;
- NSW Coastal Council;
- 16 letters from individuals;
- 3 letters from community groups;
- Petition with 124 signatures.

The submissions are attached as an Addendum to this report (Appendix 1).

### SUBMISSIONS SUPPORTING DRAFT PLAN OR RECOMMENDING EXTENDING 7(A) ZONE/CONSERVATION MEASURES

The submissions from the Government Agencies, Pottsville Community Association, Hastings Point Progress Association, Caldera Environment Centre, 8 letters from individual residents and 1 petition (124 signatures) supported the Plan or recommended extending the 7(a) Wetland Zone or

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### *Reports from Director Development Services*

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other conservation measures. The submissions are summarised with responses/comment, as follows:

#### **Increase Wetland Buffer**

The submissions from the Government Agencies, the letters and the petition all requested a wider buffer to the wetland. All but one of the submissions requested the buffer be increased from 10-20 metres to 50 metres. The justification for a wider buffer in these submissions are summarised as follows:

- Significant bird species protected under the Japanese Australian Migratory Agreement (JAMBA) and resident shorebird species recorded in or near the site are shy and are quickly stressed by disturbance. A buffer of 50 metres would assist in maintaining the usefulness of this habitat to significant species.
- 10 metre buffer does not comply fully with the objectives of Clause 14 and 28 of the North Coast Regional Environmental Plan.
- The 50 metre buffer should be provided from the perimeter of the existing vegetation. The cleared buffer should be revegetated with native species and a management plan prepared for the proposed 7(a) land.
- A 50 metre buffer and a perimeter road will assist in minimising weed encroachment into the bushland and bushfire hazard.
- A 50 metre buffer and a perimeter road between development and conservation zone (including the buffer) will assist in addressing concerns from residents about mosquitoes and mosquito borne viruses.
- Recommend the preparation of a management plan for establishment of vegetation through the buffer zone which could investigate and propose establishment of focal points for access to reduce impacts.
- The buffer zone should be zoned for the purposes of conservation and should not be developed or disturbed for any other purpose including walking tracks, bushfire hazard reduction and sediment ponds.
- A 50 metre buffer is consistent with State Government Policy and Council's adopted Estuary Management for Cudgen, Cudgera and Mooball Creeks.
- The value and need for a 50m buffer to aquatic habitats is scientifically supported (NSW Fisheries).
- Council should adhere to the recommendation of the NSW National Parks & Wildlife Service and NSW Fisheries and place a 50 metre buffer zone between development and wetlands/creeks.
- 50 metre buffer zone should be extended for the entire length of Christies Creek adjacent to Lot 156, DP 628026, Creek Street.
- Sandflies would be a problem if building occurs too close to the estuary.

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- There currently exists an easement behind residents backing onto Lot 156. This must be included in the buffer zone to maintain access.
- Warren's (1990) 10 metre buffer zone around significant wetlands due to low faunal habitat is outdated

### Response/Comment

- A 50 metre buffer zone for bushfire hazard reduction is not warranted adjacent to areas identified as mangroves. Mangroves are excluded from bushfire prone land mapping by recent guidelines prepared by the NSW Rural Fire Service (August 2002). The fire hazard development setback for other riparian vegetation communities should be flexible and based on a merit assessment of a Development Application by Council and the NSW Rural Fire Service. These communities may be permanently 'wet' because of their close proximity to the creek. A 10 metre setback (10 metre buffer) may therefore be sufficient to address bushfire hazard.
- The 7(a) Zone permits roads, environmental facilities (walking tracks/board walks/observation decks and the like) and urban stormwater quality management facilities. A 7(a) Zone over the estuarine wetland and 50 metre buffer therefore does not necessarily prohibit development that could disturb shy birds and other significant fauna. ~~The 7(a) zone (including the buffer)~~ does not therefore resolve the potential conflicting uses of recreation (fishing/bird watching etc) vs wildlife conservation. The decision on whether future development should enable greater public access to the wetland for recreation (public open space/private open space) or to reduce public/private access to the wetland to enhance wildlife conservation can only be dealt with as part of the assessment of a Development Application. Under Clause 25 of Tweed LEP 2000 any Development Application for a site on or adjacent to a 7(a) Zone requires the preparation of a Plan of Management showing how adverse effects arising from the development can be mitigated. However, consistent with the provisions applying to a 7(l) Habitat Zone, it is recommended that Clause 25 be amended to require a consent authority to consult with the NSW National Parks & Wildlife Service and NSW Fisheries when assessing a Development Application on or adjacent to land within a 7(a) Wetland Zone. Clause 31 (development adjoining waterbodies) under Tweed LEP 2000 not only requires consideration of impacts on flora and fauna, but also impacts on water quality and the need for public access to waterbodies. The existing and proposed amendments to Clauses 25 and 31 should therefore adequately address management issues associated with a proposed development between wetlands and future development proposals without requiring a 50 metre 7(a) zoned buffer at the development assessment stage.
- The Estuary Management Plan (EMP) generally adopts a minimum vegetated/revegetated buffer width of 50 metres, which was recommended to Council by the NSW National Parks & Wildlife Service. The EMP also states that:  
*"The most appropriate buffer width depends upon a variety of factors and should be defined on an individual basis taking into account the following:*
  - *The significance and conservation value of existing vegetation type and status (local, state, regional);*
    - *Presence/absence of threatened species;*

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- Ongoing trends of bank erosion;
- Likely impacts from existing and encroaching development (eg, stormwater runoff, weed infestation, increased clearing, trampling, rubbish dumping);
- Recommendations of Council's proposed Vegetation Management Plan;
- Land tenure; and
- Current and/or proposed creek and creekside recreational use".

"Some areas may require an additional buffer area to vegetated riparian areas abutting future development that is likely to generate adverse impacts. Specific studies will need to be undertaken by the developer to demonstrate that the proposed buffer width would satisfactorily address the above issues. Although a minimum buffer width of 50m is recommended, in some instances, the buffer may form part of the development landscaping or recreational facilities (eg, boardwalk, picnic areas) where it can be demonstrated these are consistent with the environmental management objectives for the creeks".

As an adopted Policy Council officers should be taking the Plan into account when assessing Development Applications. Although a 50 metre buffer is recommended by the Estuary Plan its implementation and management should be dealt with on merit on a 'case by case' basis.

- Council's Entomologist, Clive Easton, has advised (pers com 12/8/03) that principal biting midge species breeding around the Cudgen Creek inter-tidal zone is a member of the *Culicoides subimmaculatus* complex. These biting midges have a flight range of over 200 metres, but are far more troublesome within 50 metres of the breeding areas. Clive Easton has further advised that residents of Creek Street are badly affected by these midges during late spring to early autumn period.

Saltmarsh mosquitoes can also be problematic, but are not as troublesome as biting midge. Treating the problem with pesticides (eg, fogging) is not considered feasible because of the difficulty and uncertainty associated with applying pesticides (uncertain success rate, licensing etc) in close proximity to existing and proposed urban areas (pesticide drift and associated health/amenity issues).

A revegetated 50 metre buffer is not supported. A revegetated buffer would exacerbate the biting insect problem by extending shelter for midge and mosquitoes in closer proximity to existing and future urban areas.

Council's Entomologist also did not consider a cleared 50 metre wide, 7(a) zoned buffer between breeding areas and development was justified for a problem that occurs sporadically during the year over all of the site.

An option accepted by Council's Entomologist to address the management of biting midge and mosquitoes was the retention of a 10 metre buffer zone and new provisions inserted into Tweed LEP 2000 to require applicants and Council to address problems of biting midge and mosquitoes as part of an overall Management Plan in a Development Application for areas adjacent to or in midge/mosquito breeding areas. Although Council has a Development Control Plan (No 25) for biting midge and mosquitoes, there is no reference to this issue in Tweed LEP 2000. Insertion of appropriate provisions in the Tweed LEP would strengthen requirements for addressing this issue.



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- Clause 14 of the North Coast REP does not stipulate the width of land to be zoned Environmental Protection required separate adjoining landuses from wetlands and fishery habitats. The 10 metre buffer width plus existing and proposed provisions under Tweed LEP 2000 (management plans and consultation), the Estuary Management Plan and DCP 25 (Biting Midge and Mosquitoes) are appropriate measures to address issues associated with the assessment of a Development Application lodged for Lot 156.

### **Significant Vegetation – Recommend 7(a) Zone**

- The NSW NPWS have recommended that the patch of Broad-leaved Paperbark and Eucalyptus Spp± Swamp Box Closed Forest to Woodland community to the west of the proposed 7(a) Zone be included in the Environmental Protection Zone (see Figure 2).
- Around the edges of the property there are a number of well established trees less than 10 metres from the 7(a) zone that should be incorporated in the buffer zone.
- The draft LEP does not correct errors made in Amendment 24 to Tweed LEP 1987 (clearing and draining of native plant communities in northern part of property without development consent). It is unfortunate that Council deliberately chose not to review the zoning of the entire property. Suggest Council prepare an LEP for the balance of the property.

### Response/Comment

- The patch of broad-leaved paperbarks and other native trees are in close proximity to the wetland. Part of this patch is included in the 10 metre buffer zone in the exhibited draft Plan. The native vegetation community, although small, is generally contiguous with the wetland community to the east (see Figure 2). The 7(a) zoned buffer, under the draft Plan, includes part of the small patch of paperbark/swamp box trees. Paperbark communities are listed as vulnerable in the region (Comprehensive Regional Assessment). In this locality these remnant native trees also have amenity value. The 7(a) zoned buffer should therefore be extended to include this patch of native trees consistent with recommendations from the NSW NPWS.
- The Council resolution dated 20 November 2002 is unclear on the exact extent of the area where the draft LEP and Environmental Study should apply. The map referred to in the Council's resolution (aerial photograph Map Info 7 by J Batchelor marked "no 1" and dated 12 November 2002) covers almost all of Lot 156, DP 628026. The draft Plan was, however, prepared by Council officers on the assumption that the Council resolution referred to the eastern section of Lot 156. This assumption is generally consistent with the report to Council by the Director of Development Services. Consistent with that assumption the draft Plan cannot be amended to review zone boundaries anomalies in the western section of the site. It should be noted, however, that Council has resolved under a separate resolution on 16 July 2003 to consider a proposal to rezone land on 156 from 2(c) Residential/Tourist Zone to 2(c) Urban Expansion Zone. This resolution presents an opportunity to review zones for the western section of the site when (and if) a draft Plan is prepared.

### **OTHER MATTERS RAISED IN THE SUBMISSIONS**

In considering the rezoning attention should be given to:

- Restoration of cleared land carried out since 2001;

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- Removal of barbed wire fencing in and around wetlands/waterways;
- Removal of horses grazing in and around waterways;
- Maintaining public access to Christies Creek;
- Draft LEP fails to address the need and justification for providing public access along the foreshore to Christies Creek under SEPP 71, NSW Coastal Policy and NCREP;
- Some areas were Crown Land until they were unjustifiably claimed by the owners of Lot 156 in 1981 via a riparian boundary adjustment based on a survey that grossly misrepresented the position of the mean high water mark. This is relevant to the issue of providing foreshore access at the plan making stage.

#### Response/Comment

- An LEP cannot require any landowner to change the current lawful use of the land. The proposed 7(a) Zone, however, will, when gazetted, restrict any further clearing of vegetation or intensification of the existing lawful landuse. It should be noted, however, that Council has responded to community complaints regarding the illegal grazing of goats (since removed at Council's request) and illegal clearing of wetlands in the western part of the site. Council commenced legal action against the property owner for illegal clearing in November 2002. The Land and Environment Court declared the clearing within the 7(a) Wetland Zone as illegal and that the landowner carry out rehabilitation of the site, erection of a 4 strand wire fence separating the wetland from the remainder of the property. The Court also outlined guidelines for future removal of noxious weeds that avoided significant clearing of native vegetation in wetlands.
- As discussed in the section on the wetland buffer, the draft LEP, including the 7(a) Wetland Zone, does not address the issue of conflict between increased public/private access to the wetland/foreshore and disturbance of shy shorebirds and other fauna. This matter is to be assessed at the Development Application stage. An additional provision requiring consultation with NSW NPWS and NSW Fisheries is recommended to help Council with the assessment of any future Development Applications and Management Plans on land in or adjacent to a 7(a) Wetland Zone. Additional provisions on biting midge and mosquitoes are also recommended which may have implications on the desirability for increasing public/private access to biting midge/mosquito breeding areas.

#### **Submissions Objecting to Draft Plan to Rezone from 2(c) to 7(a) Wetland Zone**

Seven (7) submissions objected to the draft Plan. These submissions are summarised as follows:

##### Decrease Wetland Buffer

- Determination of buffer is best addressed in detail at the Development Approval stage rather than being incorporated into the rezoning process.
- The 20 metre buffer in the north-east sector constitutes a departure from the Council resolution and is not supported by any scientific analysis.

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- The north-eastern buffer may have a significant impact on the future use of the site, particularly in relation to vehicular access to the unnamed road adjoining the north-eastern area of the site.
- Any buffer zone should be restricted to enable a corridor of at least 15 metres width between the north-eastern boundary and the 7(a) Zone.
- Southern buffer – substantial encroachment of the proposed 7(a) Zone onto land which could not be considered environmentally sensitive.
- A large portion of the land Council seeks to rezone does not fit the character of the zoning sought because it is not wetland or forest.
- Council is acting beyond its powers to zone land adjacent to wetland/littoral rainforest as 7(a).

### Response/Comment

- The North Coast Regional Environmental Plan (State Government) sets out criteria for Councils for identifying environmental zones in draft LEPs. The area identified as 7(a) under the draft LEP is either a wetland, fishery habitat or land separating adjoining landuses from wetlands/fishery habitats (buffer). The 7(a) Zone has therefore been prepared in accordance with Clause 14(a) of the North Coast Regional Environmental Plan relating to wetlands, fish habitats and buffer areas.
- Although Clause 14(a) does not specify the width of the buffer zone, the 10-20 metre wide buffer zone incorporated into the draft Plan is inconsistent with the recommended buffer width of 50 metres by State Agencies. To fully justify the 50 metre buffer NSW Fisheries have provided Council with a list of fifteen (15) scientific references detailing the value and role of buffer zones. The value and role of riparian/wetland buffers is accepted. For reasons outlined in Section 2.1.1 (increase wetland buffer) of this report a reduced buffer has been adopted and not the 50 metre buffer recommended by State Agencies.
- The 7(a) Wetland/Littoral Rainforest Zone does not prohibit roads, environmental facilities and urban stormwater quality management facilities. This zone, including the southern and northern buffer, provides sufficient flexibility for the proponent to argue their case for using the buffer for these uses as part of a future Development Application.

### **Proponent's Rezoning Proposal**

- The landowner and their consultants have suggested that the rezoning of Lot 156 should not proceed in a piece-meal fashion, but rather should be dealt with as part of an integrated process incorporating a rezoning proposal put forward by the landowner in February 2003.
- The landowner has more recently submitted a suggested rezoning plan for the site incorporating:
  - Part 2(c) Residential/Tourist Zone to 2(c) Urban Expansion;
  - Part 2(c) Residential/Tourist Zone to 7(a) Wetland;
  - Special Clause to enable artificial waterbody (lagoon) to be used for the purpose of drainage/water quality control.

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### Comment/Response

- Council resolved on 16 July 2003 that:
  - “1. Council indicates to the proponents there is merit in their proposal to prepare a draft Local Environmental Plan to rezone that part of the property zoned 2(e) Residential Tourist to 2(c) Urban Expansion and prepare a draft Development Control Plan for tourist development.
  2. Council considers including the project in the next review of the Strategic Planning Work Program”.

When considering the Strategic Planning Work Program on 20 August 2003, this project was not included in the Program. There is no reason why Amendment No 44 cannot be finalised prior to reviewing the zoning for the remainder of the site. The review of the zones for the remainder of the site can be dealt with at a later time.

### **Other Matters**

- Council is denying investors, and therefore the local community, from using the land to its best advantage and full potential. If this land was used to support a tourist resort this would promote the economic welfare of the entire area, an area well known for its high unemployment rates.
- The reduction in developable area (beyond that justifiable by the facts) seriously constrains the ability to build the type of resort facility that is best suited to the site.
- Property owners and their consultants not treated fairly. Property owners were not consulted.
- Development of the site is being hampered/stymied before it can start which directly affects any income (consultant for the landowner).
- Rezoning application submitted by Walter Elliott Holdings better meets the objects of the Act.
- Decision to rezone a large section of the property will result in destroying, defeating and prejudicing the rights, interests and legitimate expectations of the owners from the development of the site.
- The change of the zoning renders the proponent's plans impossible. Viability of the project at risk.
- If the rezoning occurs then the Palm Lake Resort may not go ahead. The resort needs to have a certain size to place all the facilities.
- Council is deliberately increasing the value of neighbouring properties by taking the possibility of affordable housing away from local senior citizens.
- Object to the reduction of the landuse to approximately 45%, especially a good portion of that land on the eastern boundary adjoining Crown Land.

### Comment/Response

- The draft Plan was publicly exhibited in accordance with the Environmental Planning and Assessment Act. The landowner was advised of the exhibition to provide an opportunity for them to comment on the draft Plan.

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- The draft Plan provides greater certainty regarding the development potential of Lot 156. It is highly unlikely that areas identified as wetland (mangroves/saltmarsh) proposed to be zoned 7(a) Environmental Protection could be developed for residential or tourist development. Furthermore, the reduced buffer zone (10-20 metres and not 50 metres) provides flexibility to enable, on merit, the proponent to seek approval for some types of development within close proximity to a wetland and midge/mosquito breeding habitat.
- The 2(e) Residential/Tourist Zone has been in place since August 1991 (12 years). There has therefore been substantial opportunity for developers to lodge an application for the development site. The Environmental Study clearly indicates that the current landuse zones do not reflect the capability/suitability of the site for residential/tourist accommodation which should have been addressed by the previous spot rezoning in the early 1990s.
- It should be noted that the current landowners have submitted a submission to Council to change the 2(e) Residential/Tourist Zone to a 2(c) Urban Expansion Zone. In their submission the landowner and their consultants have argued that there are various reasons why the site is not conducive to establishing viable tourist accommodation. Increasing the proportion of residential development would, in their opinion, make it viable. A submission by the landowner includes rezoning the eastern part of the site (mangroves/saltmarsh) to 7(a) Wetland. This issue of rezoning the part of Lot 156 to 2(c) Urban Expansion is subject to a separate 'spot rezoning'.

### CONCLUSION

Based on a review of the submissions it is recommended that the exhibited draft zone map be amended as shown in Figure 3. The amended increases the 7(a) Zone boundary to include a patch of paperbark/swamp box/native trees in close proximity to the mangrove/saltmarsh wetland consistent with a recommendation from the NSW National Parks & Wildlife Service (see Figure 2).

The exhibited draft Written Instrument is also recommended to be amended as follows:

Amend Clause 31 Development adjoining waterbodies

Insert new objective in Clause 31(1):

- *"To minimise the impact on development from known biting midge and mosquito breeding areas".*

Insert Clause 31(3)(c):

*"(e) it has considered the likely impact of biting midge and mosquitoes on the residents and tourists and the measures to be used to ameliorate the identified impacts".*

Amend Clause 25 by inserting Clause 25(4):

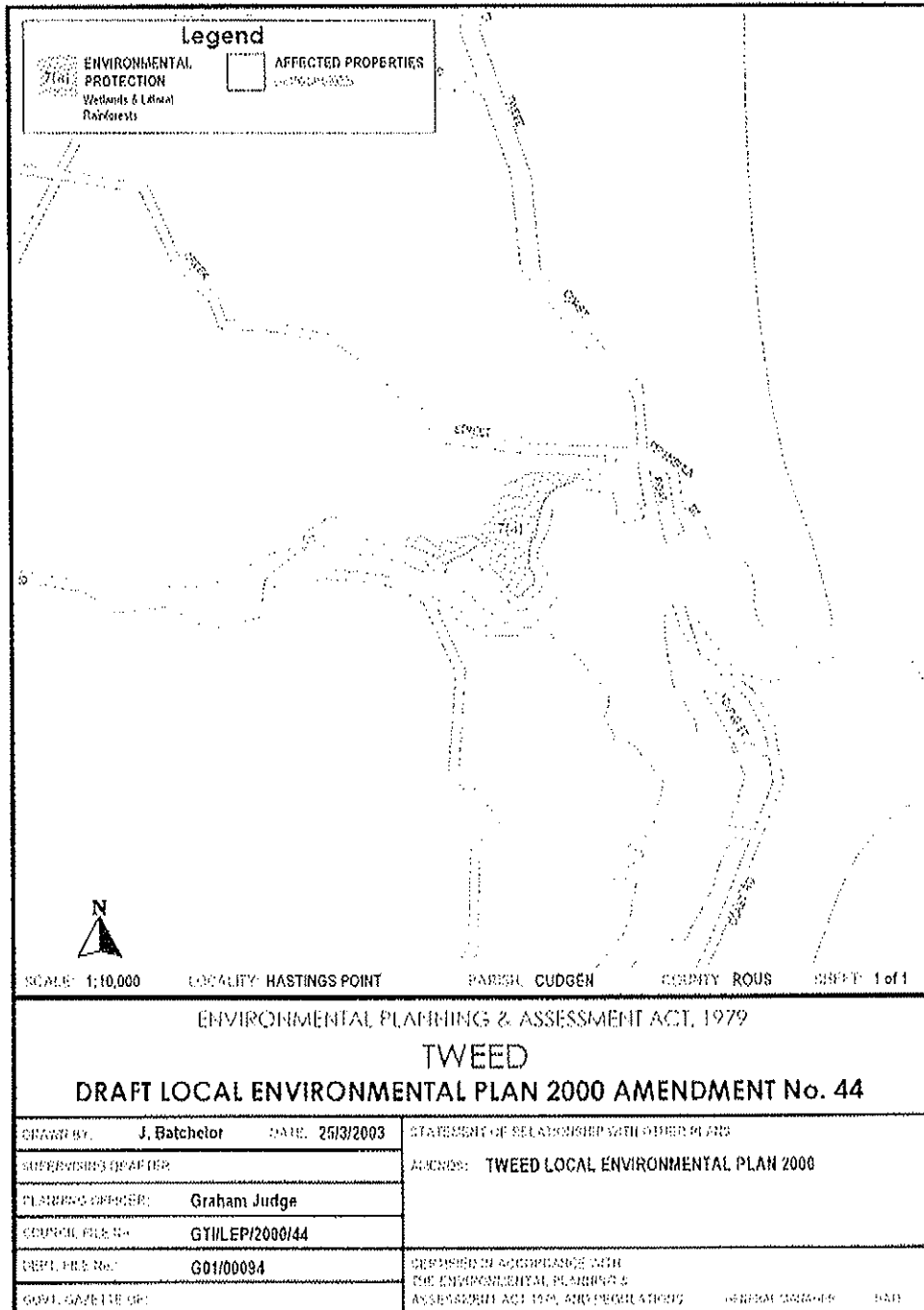
*"(4) The consent authority must not grant consent to development (other than for the purpose of agriculture or a home business) on land within Zone 7(a) without having regard to any representation made by NSW Fisheries and the NSW National Parks & Wildlife Service".*

The amendments to the Written Instrument ensure the issues of biting midge/mosquitoes and comments from NSW NPWS and Fisheries are taken into consideration as part of the preparation and assessment of the Development Application.

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Figure 1 – Exhibited Draft Tweed Local Environmental Plan 2000 (Amendment No 44)



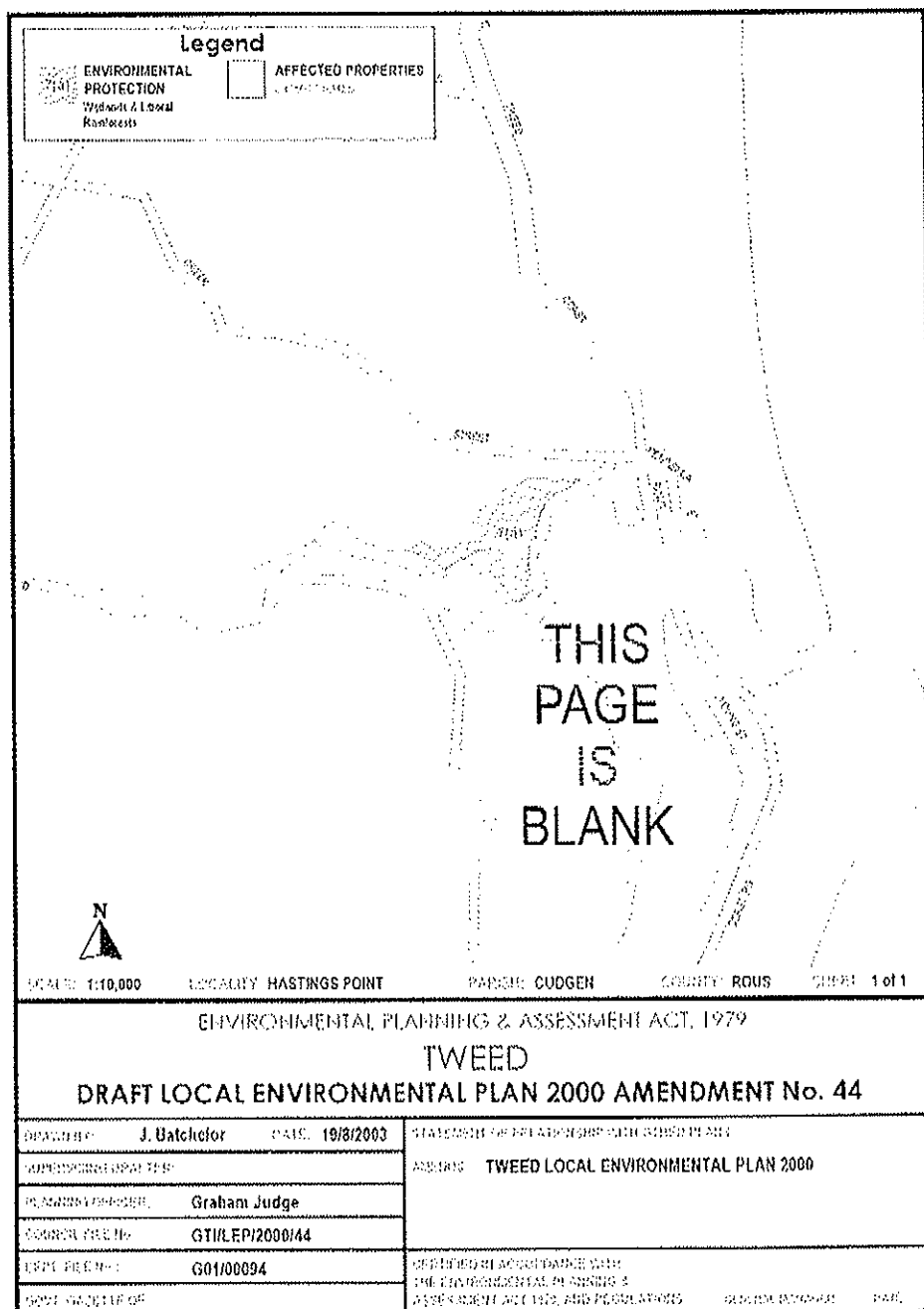
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**Figure 2 - Amended Draft Tweed Local Environmental Plan 2000 (Amendment No 44) over Air Photo showing patch of native trees and wetlands**



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*Reports from Director Development Services***Figure 3 – Amended Draft Tweed Local Environmental Plan 2000 (Amendment No 44)**



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## Reports from Director Development Services

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3. ORIGIN: Development Assessment Unit

FILE REF: PF1431/190 Pt4

**REPORT TITLE:**

**Proposed Amendment to Tweed Local Environmental Plan 2000 - Lot 156 DP 628026 Creek Street, Hastings Point**

**SUMMARY OF REPORT:**

The subject site located at the end of Creek Street, Hastings Point is zoned 2(e) Residential Tourist and 7(a) Environmental Protection (Wetlands). Of the land zoned 2(e) Residential Tourist, approximately 30% has characteristics of an estuarine wetland dominated by mangroves and salt marsh affected by tidal processes. The potential for developing this land is therefore highly restricted.

This report sets out the justification to prepare a draft Local Environmental Plan to amend Tweed Local Environmental Plan 2000 to rezone parts of this property to 7(a) Environmental Protection (Wetland).

**RECOMMENDATION:**

That :-

1. Council informs the Director-General of PlanningNSW, pursuant to Section 54 of the Environmental Planning and Assessment Act that it intends to prepare a draft Local Environmental Plan, to rezones parts of Lot 156 DP 628026, Creek Street, Hastings Point identified in Figure 3 from 2(e) Residential Tourist Zone to 7(a) Environmental Protection (Wetland).
2. The Director-General of PlanningNSW be advised that in Council's opinion an Environmental Study pursuant to Section 57 of the Environmental Planning and Assessment Act 1979 will be required.

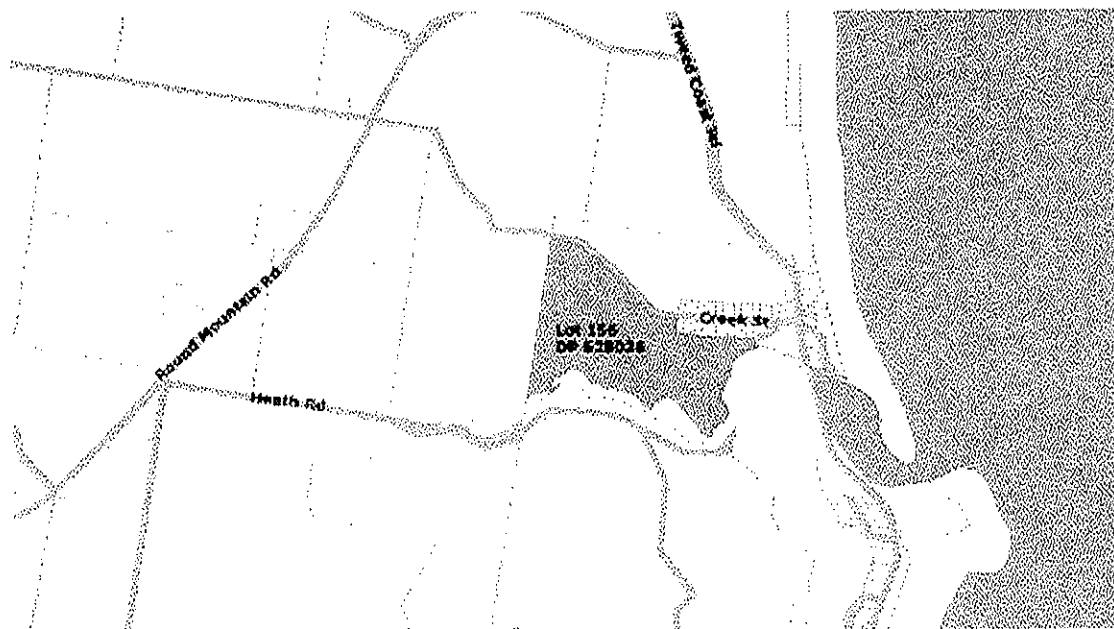
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## Reports from Director Development Services

### REPORT:

The subject land, Lot 156 DP 628026, has an area of 17.7 hectares, is accessible by Creek Street, Hastings Point, and fronts Christies and Cudgera Creeks along its southern boundary. The land also contains a large tidal pond, which was constructed from previous dredging activities on the land during the 1980's. (See Figure 1 – Site Plan). Approximately 10.16 hectares of the site is zoned 2(e) Residential Tourist with the remaining 7.8 hectares Zoned 7(a) Environmental Protection (Wetlands and Littoral Rainforest). (Figure 2 – Extract from Tweed LEP 2000)

FIGURE 1 – SITE PLAN



A large portion of the property in the south east corner is zoned 2(e) Residential Tourism, but is an area dominated by mangroves, marshland, and tidal flats - likely to provide important habitat for estuarine flora and fauna. (See Figure 3 – Area of Investigation). The area is also congruous and contiguous to wetlands found within Cudgera and Christies Creek, some of which have been identified under State Environmental Planning Policy No. 14 Wetlands.

Part of the property, identified as the Area of Investigation in Figure 3, is not considered suitable for urban/tourist development because development would require removal and destruction of marine vegetation and fishery habitats. Any development of this part of the property would also require the acceptance of various government agencies including National Parks and Wildlife Service, NSW Fisheries and the Department of Land and Water Conservation. Approximately 3.5 hectares of land currently zoned 2(e) is inappropriately zoned. This area should be zoned Environmental Protection Zone

### History

The subject property has had along history with the land being dredged and filled during the 1980's by previous owners. The evidence of these works are still present on the site a large pond in the

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## Reports from Director Development Services

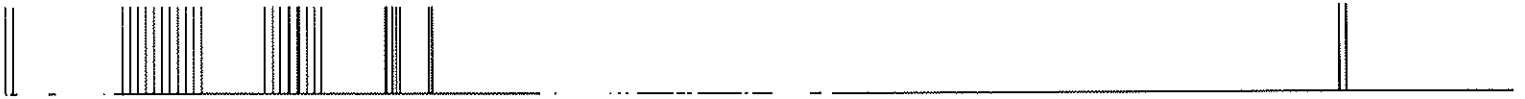
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centre of the property, and minor canals and holes are evident in the south east corner of the property which are affected by the tidal movements of Christies and Cudgera Creek.

Under Tweed Local Environmental Plan 1987 the land was zoned part zoned 7(a) Environmental Protection (Wetlands), 7(l) Environmental Protection Habitat, 2(a) Residential "A" Zone and 6(b) Proposed Open Space. Under Tweed LEP 1987 Amendment No. 24 Council rezoned the land part 7(a) Environmental Protection (Wetlands) Zone and 2(c) Residential Tourist Zone. These zones have been carried through with the gazettal of Tweed Local Environmental Plan 2000

Over the past 12 months Council staff have had reason to inspect the subject land on at least five occasions following complaints from concerned residents in relation to clearing activities, earthworks and stocking the property with goats, including the clearing of a lightly timbered area in the north west corner of the property over the 2002 Australia Day Weekend, and more recently slashing of an area of wetland adjacent to the western boundary. During these inspections it has become apparent that part of the property and in particular the south east corner of the land has attributes of a coastal wetland and is affected by the tidal processes of the local waterways. The detailed planning history that follows:

1. The area was severely disturbed by previous landowners from dredging activities during the 1980's. Aerial photographs in Council's possession show the area as being near devoid of vegetation in 1984. A photograph taken three years later indicates the vegetation had started to return. The area has now been substantially rehabilitated with mangroves and other estuarine species.
2. The Local Environmental Study prepared by James Warren for Amendment No. 24 of Tweed LEP 1987 incorrectly mapped part of this area as Open Forest being "trees to 14 metres in height with a shrub understorey to 2 metres high and grasses and ferns as ground cover". It is considered this description is erroneous. Aerial photos in Council's records dated 31/8/84 show the area as disturbed by clearing activities. The aerial photo dated 6/8/87 show the area as starting to rehabilitate with natural regrowth of mangroves. Such a description would have given Council and the Minister for Planning in 1990 the wrong perception of the natural and physical attributes of the area. A more suitable description based on this aerial photo would have identified this area as Mangrove Re-growth, Rushlands and Sedgeland, making the area worthy of protection by way of an appropriate environmental protection zoning.
3. Further the LES conclusion identified this area as being highly disturbed and of low conservation value. This may have been a correct assumption considering the level of activity on the site during the 1980's, and as evidenced from the two aerial photos. However as the area began to regenerate, it is considered to have a much higher conservation value as habitat for fish stocks, bird life and other estuarine species of flora and fauna.



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### **PLANNING MATTERS**

#### **North Coast Regional Environmental Plan 1988**

Under Clause 14 of the REP wetlands, fishery habitats and sufficient land to act as a buffer to separate adjoining land uses, should be included in an environment protection zone. Such a zone would also include provisions requiring consent for development such as agricultural uses, the clearance of vegetation, the filling or draining of land. The 7(a) Environmental Protection (Wetlands and Littoral Rainforest) Zone under Tweed LEP 2000 includes such provision.

A 2(a) zone would also provide a suitable buffer between Christies and Cudgera Creeks to the existing residential development along Creek Streets and any future residential development of the remainder of the land.

#### **Clause 29 Plan preparation—natural areas and water catchments**

Under Clause 29 of the REP significant areas of natural vegetation including wetlands and potential wildlife corridors should be included in environmental protection zones. The subject land includes a significant area of natural vegetation being a wetland in an environmental protection zone, and is consistent with Clause 29 of the REP.

#### **Tweed LEP 2000**

The exact location of the new zone boundaries would need to be confirmed by way of Local Environmental Study, which would include as minimum a flora and fauna analysis of the area and survey of the high water mark on the property. The rezoning of the land would then provide the necessary statutory protection under Tweed Local Environmental Plan 2000.

### **STRATEGIC PLANNING UNIT WORK PROGRAM**

#### **Vegetation Management Plan – Tweed LEP 2000 (Amendment No. 21)**

No provision has been made in the current work program adopted by Council for the review of the zoning arrangements for the subject land. The decision to review rezoning for this land has resulted from a number of complaints from adjoining residents about clearing activities and the like occurring on the land over the past 12 months, and subsequent site inspections carried out by Council Officers, which has resulted in this irregularity being discovered.

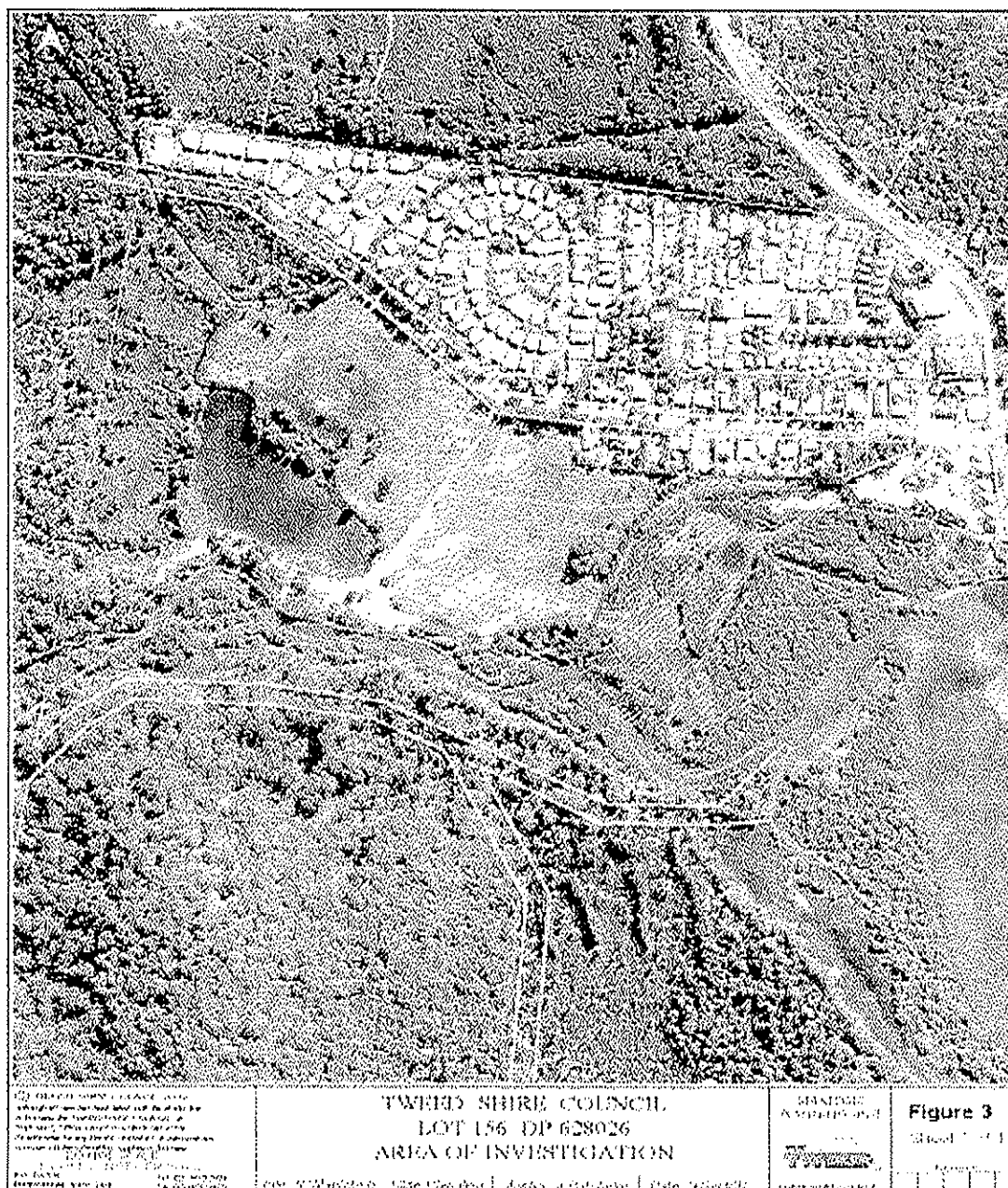
### **CONCLUSION**

Current zoning under the TLEP 2000 over subject land does not reflect the environmental constraints for the land (wetlands). The wetland areas within the subject site currently zoned 2(c) Residential/Tourist should be amended to 7(a) Environmental Protection (Wetland/Littoral Rainforest) zone.

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## Reports from Director Development Services

**FIGURE 3 – AREA OF INVESTIGATION (HATCHED)**



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### Environmental Study

It is considered an environmental study is required in accordance with State Government Policy. The exact siting of the future 7(a) Environmental Protection (Wetlands and Littoral Rainforest) Zone boundaries needs to be properly surveyed and this would be achieved by way of a flora and fauna analysis, a survey of the high water mark within the south-east corner of the property, and the provision of appropriate buffer zones. The area of investigation is indicated as the hatched area in Figure 3 (approximately 3.5 hectares in size). The zone boundary between the 7(a) Environmental Protection (Wetlands and Littoral Rainforest) Zone and the 2(e) Residential Tourist Zone would be amended in accordance with the recommendations with the Environmental Study.

### CONCLUSION

A proposed LEP amendment is recommended to zone those areas of this property which have wetlands and are unsuitable for urban/tourist development from 2(e) Residential Tourist to 7(a) Environmental Protection (Wetlands and Littoral Rainforest). It is recommended Council proceeds with the preparation of a draft LEP and Environmental Study.

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