

Submission to Tweed Conservation Zone Review

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Summary

- This submission is directed to the DPHI as much as TSC.
- It is not about the merit of areas that are proposed for conservation zoning, but about considerable areas that have been left out, despite evidence that they qualify.
- The consequence of the exclusions is that the task of dealing with a considerable part of the deferred areas in TLEP 2014 in the coastal strip is once again deferred.
- The zoning proposition put on public display does little or nothing to reduce the confusion of having a complex spatial blend of two LEPs in the coastal strip each with its own land use tables. It arguably makes the confusion worse. It is certainly an opportunity squandered.
- There is evidence that TSC has no plans to give priority to dealing with the recently, yet again deferred, quite large areas. This of concern.
- The DPHI is as much responsible as TSC for delays, setbacks and consequent chaotic outcomes. The DHPI's recent direction to "remove land mapped as Important Farmland in the North Coast Regional Plan 2041 that is not proposed to be zoned rural" has been an extremely unhelpful intervention and quite possibly unlawful. It should be withdrawn.
- 641 ha of C zoning proposed in TSC's Gateway application has been excluded as a result of the DHPI's "important farmland" direction. The fact that 297 ha of the 641 ha is within the SEPP coastal wetlands is a measure of how ill-conceived the direction is. Much of the balance – 344 ha is likely to consist of SEPP littoral rainforest, EECs, key threatened species habitat or over-cleared vegetation communities, etc.
- Of the 641 ha of C zoning proposed in TSC's Gateway application that has been excluded as a result of the DHPI's "important farmland" direction – 222 ha is not currently protected under SEPP coastal wetlands, SEPP littoral rainforest or environmental protection zones in TLEP 2000. (See graphic depiction in Appendix 1.)
- TSC excluded a number of properties within or on the edge of the study area and within the coastal strip (as defined in the North Coast Regional Plan 2041) prior to submission of the Gateway application, once again foregoing an opportunity to regularise the planning scheme and to provide protection to environmentally sensitive lands in the part of the shire that is under greatest development pressure. These exclusions amount to approximately an additional 170 ha of environmentally sensitive land. (See graphic depiction in Appendix 1.)
- DPHI has directed that "[TSC] provide further justification" for the steep land clause and overlays proposed in the Gateway application. The reasons DPHI has given for its concern are not convincing. It is therefore extremely disappointing that TSC has not responded by providing the justification but has simply excluded the clause and without an explanation as to why in the currently exhibited material.
- The process of public consultation for this project has been inadequate, especially with regard to explaining where and why individual areas were excluded, both before and after TSC's submission of the Gateway application in 2024.

Recommendations

(The following recommendations are principally to the DPHI, though the work of implementing them falls mainly to TSC. The DPHI needs to be involved to undo the misguided interventions it has made.)

1. The DPHI should withdraw the direction to “remove land mapped as Important Farmland in the North Coast Regional Plan 2041 that is not proposed to be zoned rural”.
2. The DPHI should withdraw the direction to remove the parts of the Gateway application within Tweed City LEP 2012.
3. The DPHI should direct TSC to resubmit a Gateway application which includes the following elements:
 - a. Ignore the effect of the important farmland mapping where the overlap with a property is minor.
 - b. Where there was a proposal for C zoning in the Gateway application but the property is affected by the important farmland mapping to more than a minor extent, TSC should provide a brief justification for “primary use” of conservation in each individual case – i.e. document whether the land proposed for C zoning is, for instance, in SEPP coastal wetlands or littoral rainforest, is an EEC, key threatened species habitat, an over-cleared vegetation community, etc. (Note: TSC may have already done this in its Gateway application.)
 - c. Provide justification for the creation of the proposed R5 zone at Razorback. (Justification may already have been provided, but if not, the case could readily and convincingly be made).
 - d. Include in the application a proposal for the finalisation of conservation zoning on the Gales Holdings properties at Kingscliff based on the *Kingscliff Locality Plan 2020*.
 - e. Document the exclusions made prior to Gateway application (Planning Proposal PP24/0007), review their status and document the reasons for either including them or not.
4. TSC should propose C2 and C3 zoning for land it owns at Koala Beach that in the exhibited material was proposed for RU2 zoning (see Appendix 4).
5. The DPHI should direct TSC to give priority to the task set out above prior to dealing with the review of conservation zoning in the hinterland of the shire.

Classes of exclusions

There are three classes of exclusion from conservation zoning:

- Areas that have been most recently excluded as a result of the DPHI's direction regarding overlay with the important farmland map.
- Areas that have been most recently excluded as a result of the DPHI's direction regarding parts in Tweed City Centre LEP 2012.
- Areas that have been excluded by TSC prior to making the Gateway application.

The first in the list above is clearly the most consequential, but the others are also of concern, especially the Gales Holdings lands at West Kingscliff which were excluded by TSC prior to submission of the Gateway application.

“Important farmland” exclusions ordered by DPHI

The exclusion for the purposes of public exhibition of large areas proposed for conservation zoning in TSC's Gateway application has occurred because of an ill-conceived direction from the DPHI following its assessment of the application. The direction was that TSC should “remove land mapped as Important Farmland in the North Coast Regional Plan 2041 that is not proposed to be zoned rural”. This direction is clearly inconsistent with the *Northern Councils E Zone Review Final Recommendations Report* which says: “ [w]hen zoning State or regionally significant farmland, councils will have to **take account** of the primary use of the land before applying an E zone or a rural zone” (emphasis added). Not only is it **not** recommended that land in the important farmland map should be automatically excluded from environmental zoning, but it envisages that land mapped as important farmland can be zoned for environmental conservation or management if it passes the primary use test.

There is ample evidence that TSC **has** undertaken the required accounting. (See Table 5 page 19 of *Planning Proposal PP24/0007 Tweed Conservation Zone Review: Stage 1 Tweed Coast* where it is explained how much and why some C zoning is proposed for some properties that are affected by the farmland mapping.) As described at a number of places in this submission, even a cursory attempt at accounting would lead to the conclusion that it is more than reasonable to at least put on public exhibition the proposed C zoning of these lands. (See Appendix 1 to this submission which is a property by property analysis of proposed C zoning that was excluded, mainly as a result of the DPHI direction.) Further, the DPHI has provided no description of any “accounting” that the department itself may have undertaken that could reasonably lead to the conclusion that the TSC accounting was flawed or inadequate.

The important farmland map is not a tool that lends itself to automatically ruling out conservation zoning. (See Appendix 5 for a description of its limitations and Appendices 1 and 2 for descriptions of individual instances where rigid application would clearly be misplaced. In some instances its inadequacy to the task is so clear that an accounting is barely required.)

The direction to “remove” is also problematic in that it fails to clearly describe what should be removed. This problem has become evident since the publication of the Gateway Determination Report and is documented in the report to TSC dated 10 December 2025. The two interpretations discussed were to remove (a) just the parts of proposed C zones affected by the farmland zoning; or (b) the whole of properties affected by farmland mapping that had within them proposed C zoning.

Both options would inevitably result in a rezoning proposal that left the task unfinished and in a state of messy confusion.

It is unclear if and when the mess in the exhibited proposition may be fixed. This is an unacceptable state of affairs, especially given it has already taken decades to get to this stage and that pressures on the environment are greatest in the coastal strip. (See recommendations above for what should happen next to fix the mess.) It would appear that TSC is of the view that the proposed conservation lands excluded as part of the DPHI directive need to be the subject of further review. (In the document published by TSC as part of the public exhibition it is stated “[l]and mapped as important farmland....requires further review and will be considered in subsequent project stages.” – page 5 of *Planning Proposal PP24/0007 – Tweed Conservation Zone Review Stage 1A*). However, unless the DPHI intervenes to direct TSC’s attention to this task, the process could be long delayed. (In the course of the exhibition process, planners at TSC have told members of the public that the next task is to prepare the review of conservation zones in the hinterland, i.e. not to first finish the coastal strip.) The greater problem could be the attitude of the DPHI itself. Though it is not absolutely clear, it could be assumed from the tenor of parts of the Gateway Determination Report that the DPHI is of the view that the removed lands are permanently removed and that no further review of their status is envisaged.

DPHI directive unlawful

If indeed it is the view of the DPHI that the lands removed as a consequence of its directive regarding overlap with the important farmland map are to be permanently removed and that no further review of their status is to be undertaken, the direction would quite clearly be unlawful, because the DPHI itself has not just failed to consider whether the excluded areas meet a primary use of environmental (conservation or management) but has peremptorily overridden TSC’s assessment that they do.

Rigid application of farmland map even where overlap is very small – sometimes resulting in exclusion of high conservation value public lands

The absurdity of a rigid application of the important farmland map can be illustrated with two examples: one at Cobaki and one at Pottsville. The exclusion at Cobaki has very serious consequences, given its size and the conservation values of the land. Both examples illustrate the totally unnecessary, fragmentary zoning that results as a consequence. See Appendix 2 for more detail on these two examples. They are also referenced in the review of all exclusion in Appendix 1.

Unnecessary fragmentation of zoning as result of exclusions

At quite a number of locations, exclusions of proposed C zoning have occurred that result in absolutely crazy fragmentation of the zoning plan. Two examples are described below.

At Cobaki, road reserves remain proposed for C zoning while large area both sides have been excluded. (See Maps 1 and 1a Appendix 1.) At Pottsville, the reverse occurs - a narrow strip of crown land is excluded but large areas to each side remain proposed for C zoning. (See Appendix 2 and Map 11 Appendix 1.)

At both sites the exclusions have occurred as a result of a rigid, unjustifiable application of the important farmland map.

Gales Holdings

The Gales Holdings properties are some of a number of sites of candidate C zoning excluded by TSC prior to making the Gateway application. The reasons given for their exclusion in TSC's Gateway application document (*Planning Proposal PP24/0007 – Tweed Conservation Zone Review Stage 1*) do not withstand scrutiny. This matter may have been canvassed and publicly documented in detail at some prior stage of the process, but all that is offered by way of explanation for areas excluded in the coastal strip (apart from Kings Forest) is “[t]hese areas require further consideration and review” (page 5 of the Gateway application). Not only does this not qualify as an explanation, it completely disregards extensive “consideration and review” on matters of conservation zoning in the *Kingscliff Locality Plan 2020*. Figure 2.14 of the Kingscliff plan clearly identifies a “conservation footprint” of “ecologically significant” and “offset planting” areas (the latter in offset of “ecologically significant” areas that it is accepted will be lost to urban development). The division of the site between various uses proposed in the *Kingscliff Locality Plan 2020* - uses that include “developable” - has been the subject of detailed study. There has been enough review. It is time to get on with it and step around the owner's use of delaying tactics to try and avoid an outcome he does not like.

In the document recently put on public exhibition (*Planning Proposal PP24/0007 – Tweed Conservation Zone Review Stage 1A*) the only further general explanation with regard to areas excluded is that they are “[l]and subject to significant commencement and progress of active development”. This claim clearly does not apply to the Gales Holdings site. The only part that has been commenced (and also happens to have been completed) is isolated to the west of the Chinderah – Cudgen road and is relatively small. There is no obvious reason that it needs to be a consideration in planning the future of the balance of the site.

Other properties with candidate C zoning excluded prior to Gateway application

As for the Gales Holdings site, the sum total of the reasons for the exclusion of a number of properties prior to submission of the Gateway application – reasons set out in the Gateway application and the now-exhibited material - is that they “require further consideration and review”. It is not much of an explanation. The resulting lack of accountability and transparency is of concern (see below).

The sites in question are listed in Table 1 of Appendix 1 and the accompanying maps. The units in question are numbered:

9, 10, 16, 19, 24, 38, 42, 50, 51, 53 and 54.

Exclusion of proposed amendments to conservation zoning in Tweed City Centre LEP 2012

In its Gateway Determination Report the DPHI claims there are reasons that “the proposed changes to Tweed City Centre LEP 2012 (should) be removed from this planning proposal”. The reasons do not withstand scrutiny. See Appendix 3 for a detailed scrutiny of DPHI's claims and above for recommended actions.

Public consultation inadequate

Whilst consultation with individual affected landowners may have been adequate, consultation with members of the public whose sole interest is the public interest has not been.

The problem has arisen largely because only a summary explanation and very coarse maps have been provided for the exclusions of candidate lands that have occurred over time (see pages 5 and 6 of *Planning Proposal PP24/0007 Tweed Conservation Zone Review: Stage 1 Tweed Coast* and pages 5 and 6 of *Planning Proposal for Tweed Conservation Zone Review - Stage 1A Tweed Coast PP-2025-920 Draft for Public Exhibition*).

This is to be contrasted with the detailed information provided for proposed C zoning within each of properties that have not been excluded. (The detailed information is provided via an online mapping tool.) It takes a great deal of research to discover to any detail what has been excluded and whether the areas excluded pass the “primary use” test for C zoning – research that members of the public should not be expected to undertake.

There are a number of ways to convey information on exclusions (and additions) that have occurred over time. Maps and associated text tables would probably suit most interested members of the public.

The maps and tables would most efficiently be generated by a GIS “change layer”. It is quite possible TSC already has such a GIS dataset for this project, and it could have been included in the online version of the exhibition material.

It would be even better if a GIS change layer was made available for download for those with GIS capacity. TSC and governments generally make large numbers of GIS datasets publicly available. There is no good reason that the spatial datasets (including their attribute fields) that underlay this project should be a secret. The reasons given for denying my request for this data (“it would not be fair to other members of the public”) are laughable, and all too typical of bad practice on the part of senior management that I have encountered in recent times.

APPENDIX 1

Table 1

Detailed account of reasons exclusions of proposed conservation zoning are unreasonable
(See Table 2 for a description of failings. Maps depicting location of each unit follow Table 2.)

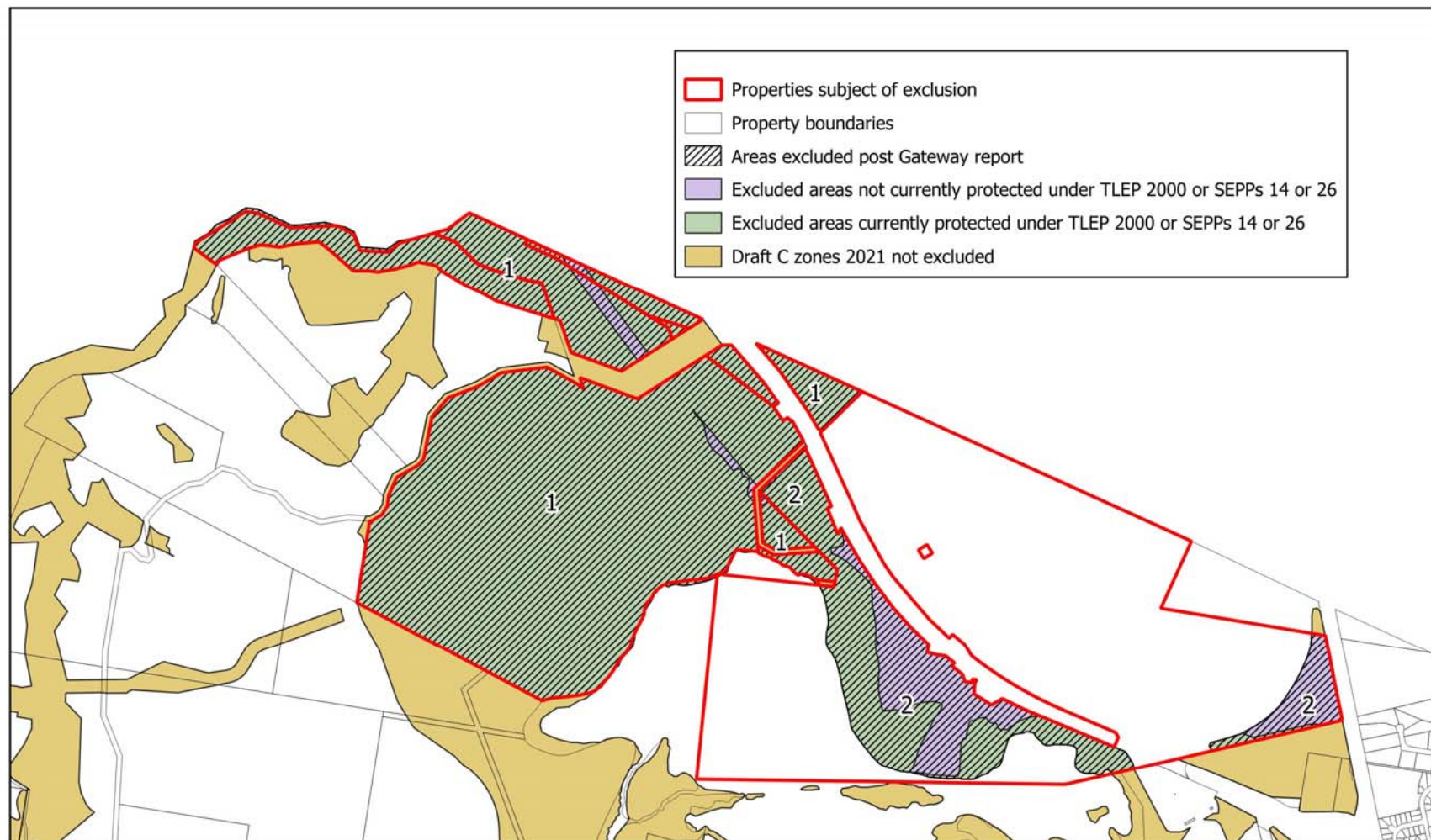
Unit	Failings	Map	Notes
1	D, E, F, H	1	
2	B, C, D, E, F, H	1	See Appendix 2 for more detail.
3	B, E	2	
4	B, D, E	2	
5	E, I	2	
6	D, E, F, H	2	
7	D, E, F	2	
8	B, D, E, F	2	
9	K	2	
10	K	3	
11	B, D, E, F, I	3	
12	D, E, F, G	3	
13	D, E, F	3	
14	D, E, F, G	3	
15	J	4	See Appendix 3 for more detail.
16	K	5	Owner – TBLALC.
17	E	6	
18	E, F	6	
19	K	6	Ownership unclear. Nominated ecologically significant in Kingscliff Locality Plan 2020.
20	K	6	Gales Holdings development. Mostly mapped in SEPP coastal wetlands. Nominated ecologically significant in Kingscliff Locality Plan 2020.
21	K	7	Gales Holdings development. Nominated ecologically significant in Kingscliff Locality Plan 2020.
22	K	7	Gales Holdings development. Large areas mapped in SEPP coastal wetlands. Nominated ecologically significant in Kingscliff Locality Plan 2020.
23	B, E, F, G	7	Low-lying, undeveloped and undevelopable part of hospital project. Nominated ecologically significant in Kingscliff Locality Plan 2020.
24	K	7	Owner – TBLALC. Nominated ecologically significant in Kingscliff Locality Plan 2020.
25	B, E, F	8	
26	D, E	8	
27	B, D, E	8	
28	B, D, E, F	8	
29	B, D, E	9	
30		9	Probably excluded because it consists largely of Camphor Laurel.
31	D, E, F	9	
32	B, D, E, F	9	
33	D, E	9	An attempt to grow Ti Tree on parts of this area was a failure.

Table 1
(Continued)

Unit	Failings	Map	Notes
34	B, D, E, F	10	
35	B, D, E	10	
36	D, E, F	10	
37	A, E, F	10	
38	K	10	This area has been excluded presumably because it has been cleared of forest sometime after 2012. The area is currently zoned 7(l) environmental protection (habitat). It is possible the clearing has been undertaken without required approvals under TLEP 2000 or the provisions of the Biodiversity Conservation Act 2016 and the Local Land Services Act 2013.
39	A, E	11	
40	E	11	Vegetation is an EEC - Lowland Rainforest on Floodplains, an over cleared vegetation community, an over cleared Mitchell landscape and riparian vegetation on waterfront land.
41	A, B, C, E, F, G	11	
42	K	11	
43	B, D, E	12	Almost all of this area is Morand soil landscape bi – Billinudgel and thus does not qualify as important farmland.
44	D, E	12	Almost all of this area is Morand soil landscape bi – Billinudgel and thus does not qualify as important farmland.
45	E, H	12	Includes banks of Burringbar Creek and mature subtropical
46	E, F	12	
47	B, D, E	13	Almost all of this area is Morand soil landscape bi – Billinudgel and thus does not qualify as important farmland.
48	B, E	13	
49	E	13	
50	K	13	Consists of road reserve without a property identifier. Excluded despite partly mapped within SEPP coastal wetlands, and despite area of road reserve to the east and west remaining proposed for C2 zoning in exhibited maps.
51	K	13	Consists of road reserve without a property identifier. Deleted despite being mapped entirely within SEPP coastal wetlands.
52	B, E, F	13	Overlap of farmland map with proposed C zoning very small.
53	K	13	Consists of road reserve without a property identifier. Excluded despite meeting criteria for “environmental”.
54	K	13	Excluded despite meeting criteria for “environmental”.

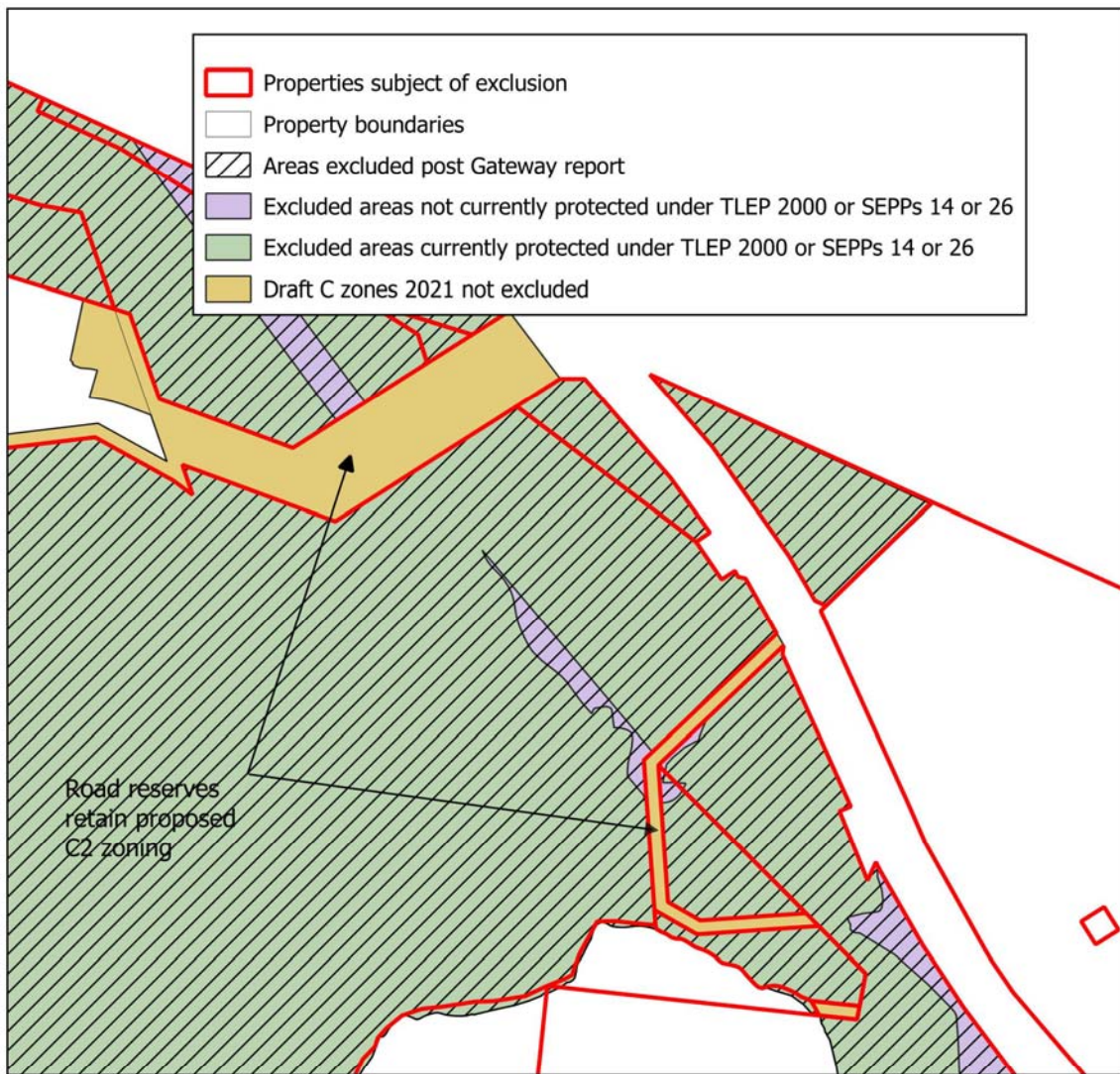
Table 2**Categories of planning issues raised by exclusions of candidate areas of conservation zoning**

	Issues raised by exclusions made after submission of the Gateway application
A	TSC has chosen to exclude all proposed C zoning within individual properties if the important farmland map overlaps the property but not any part of proposed areas of C zoning, and regardless of how small the overlap of the property is.
B	Exclusions of proposed C zoning within a property occur where the overlap with the important farmland map is well short of complete and often only minor.
C	The boundary of the farmland map is clearly in error at the location of overlap with some properties that have been excluded. For example, in some places the area of overlap consists of open water, and mangrove. (See a detailed critique of the use of the important farmland map as a planning tool for the subject project at Appendix 5.)
D	At significant parts of the overlap of proposed C zoning and the important farmland map, the soil or soil landscape is inconsistent with the criteria for state or regionally significant farmland. (See a detailed critique of the use of the important farmland maps as a planning tool for the subject project at Appendix 5.)
E	Areas proposed for exclusion from C zoning on the basis of overlap with the important farmland map have a “primary use” of “environmental” and not “agriculture” because they have one or more attributes that meet the criteria for C zoning – for example an endangered ecological community, an over cleared vegetation community, an over cleared Mitchell landscape or riparian vegetation on waterfront land.
F	Significant parts (and in some cases all) of areas excluded from conservation zoning as a result of the important farmland map and other directives from the DPHI in the Gateway Determination Report are mapped in the SEPP coastal wetlands or SEPP littoral rainforest.
G	Crown land portions with proposed conservation zoning that is apparently not the subject of any proposal for sale or development are excluded merely because it is affected by the important farmland map. (By contrast, land owned by TSC affected by the important farmland map is not excluded. Council land not excluded includes land classified as community, and in some cases, operational. Source for government intentions with regard to sale of crown land: https://mapprod3.environment.nsw.gov.au/arcgis/rest/services/ePlanning/Planning_Portal_Crown_Land/MapServer/258)
H	Exclusion of areas of proposed conservation zoning affected by important farmland map is inconsistently applied where adjacent Crown land without a title identifier (mainly road reserves or bodies of water and their banks) is generally not excluded, resulting in a confusing fragmentation of the proposed zoning scheme.
I	Areas of proposed conservation zoning have been excluded as a result of the important farmland map despite apparent landowner consent to its inclusion.
J	Areas proposed for conservation zoning have been excluded merely because they are governed by Tweed City Centre LEP 2012 and not Tweed LEP 2014, despite meeting the “primary use” category of “candidate environmental” and in a number of cases despite being mapped in the SEPP littoral rainforest. (See the detailed critique of the objections raised by the DPHI elsewhere in this submission.)
	Issues raised by exclusions made prior to submission of Gateway application
K	The reasons for exclusion of proposed C zoning are not clear because exhibited materials provide no information on exclusions. However, in some cases it may be due to objection by landowners or managers of public lands (TSC or state government) prior to finalising the Gateway application. Exclusion has occurred despite meeting the “primary use” category of “environmental” and in some cases despite being mapped in the SEPP coastal wetlands. In some cases this has resulted in a reduction in the outside boundary of the study area (along the northern edge of Bilambil Heights). Areas removed are within the part of the coastal strip where development pressure is great and delay in finalising the conservation zoning process is counterproductive.



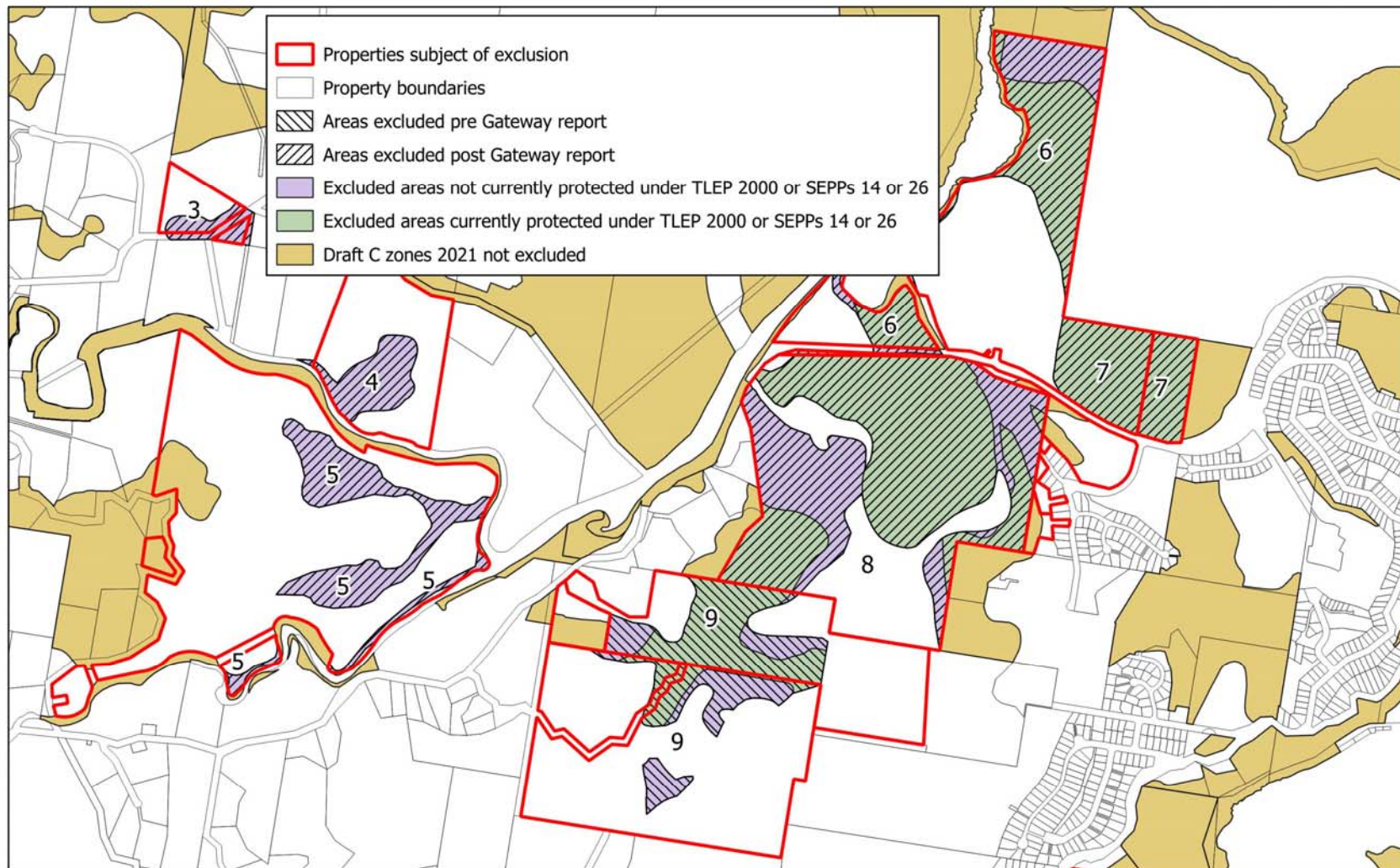
Map 1 Cobaki and Gold Coast airport precinct

See Tables 1 and 2 Appendix 1 for reasons that exclusion of depicted areas is unreasonable



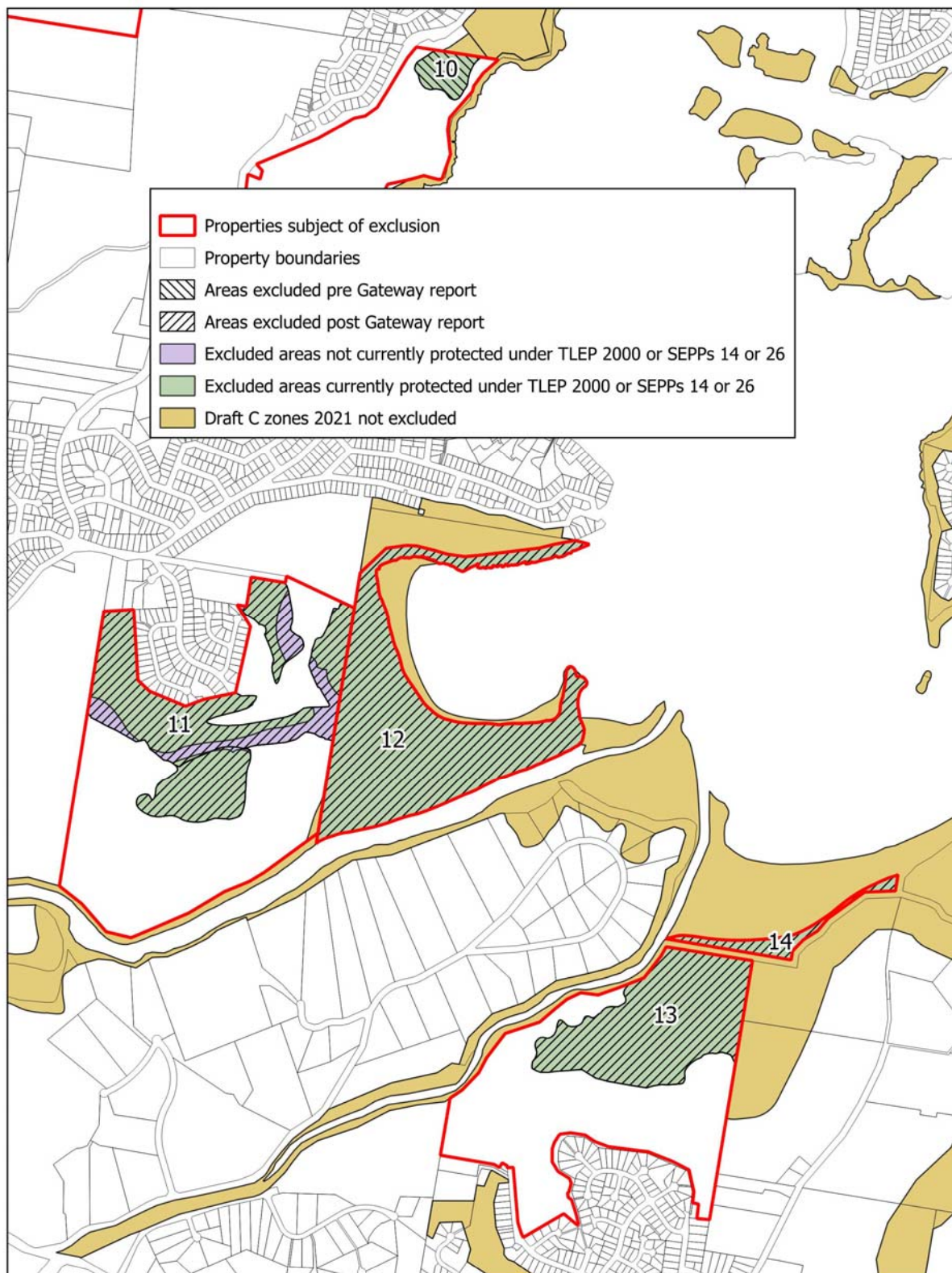
Map 1A Cobaki and Gold Coast airport precinct

Anomalous remaining C2 zoning bisecting areas of removed C2 zoning



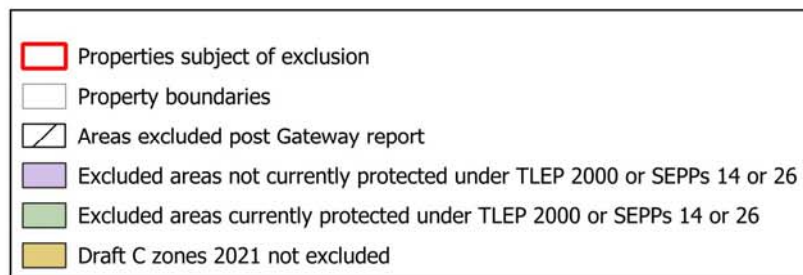
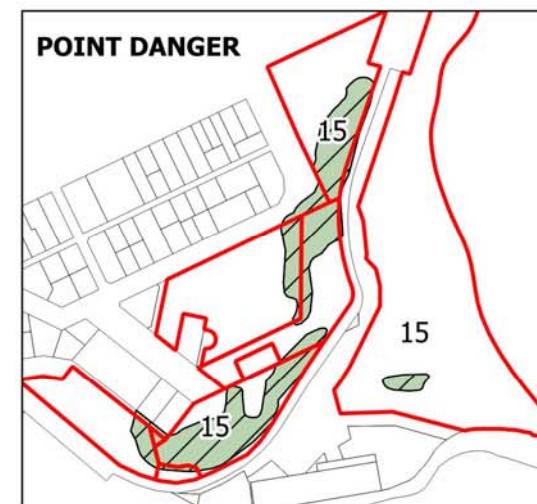
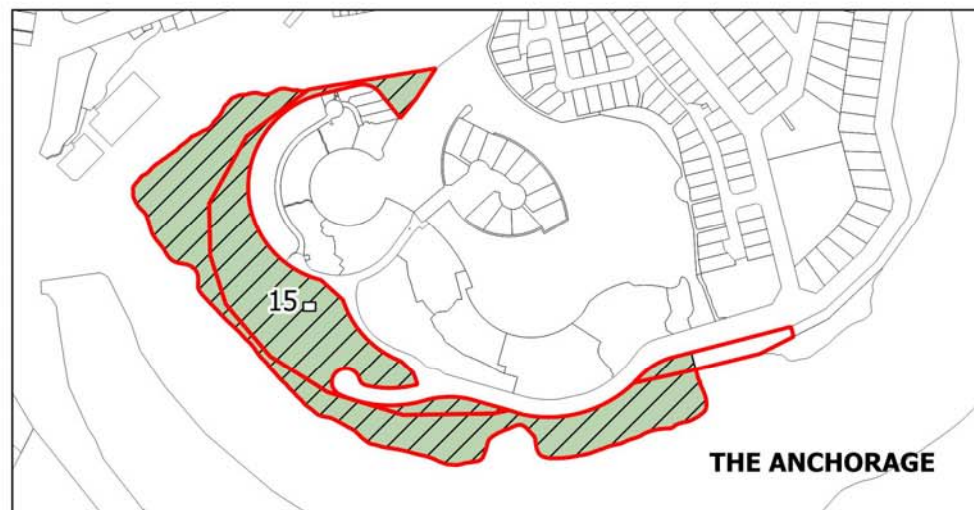
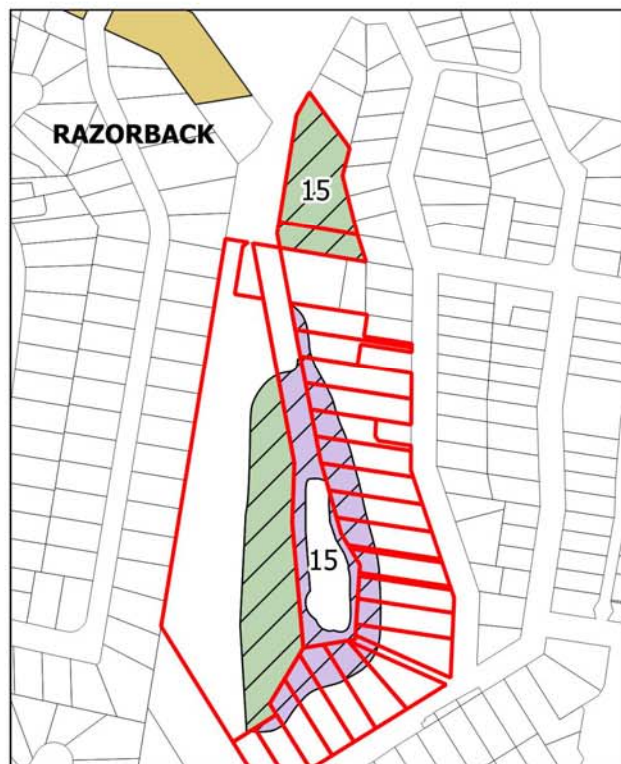
Map 2 Cobaki Road West Tweed Heads

See Tables 1 and 2 Appendix 1 for reasons that exclusion of depicted areas is unreasonable



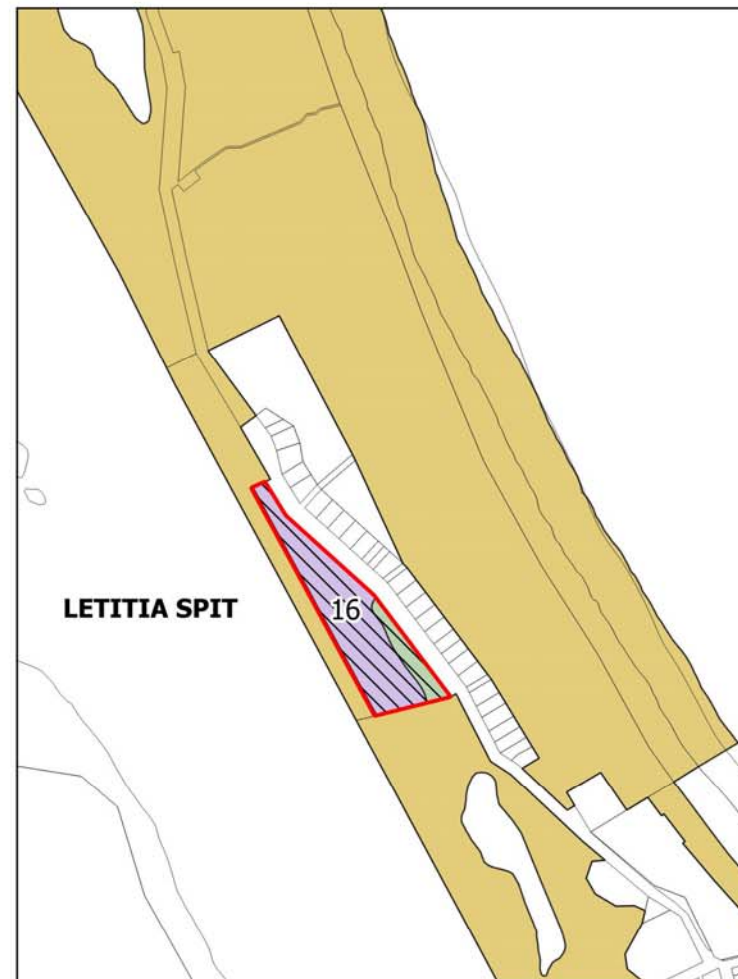
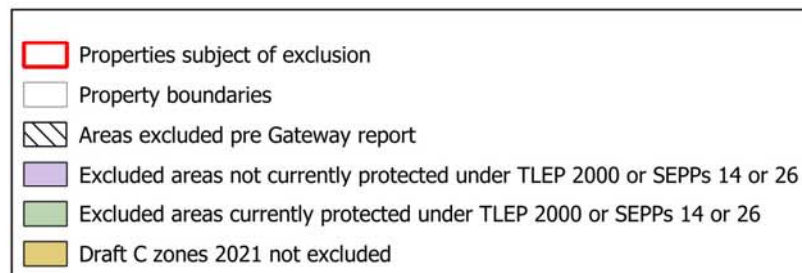
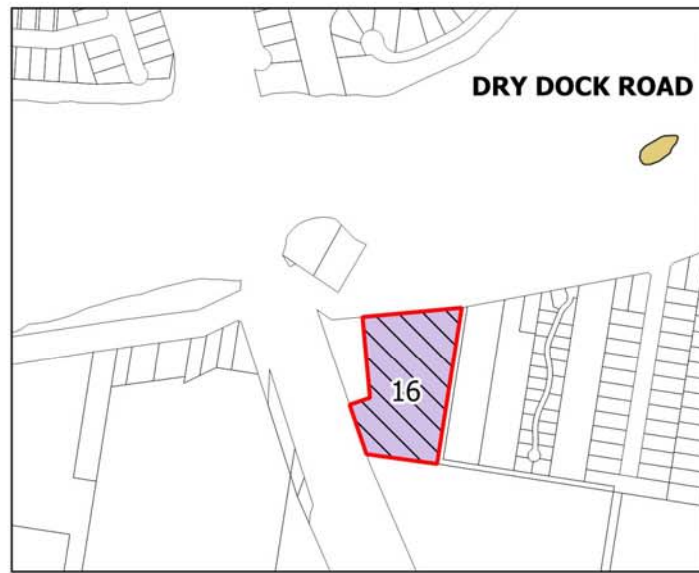
Map 3 Bilambil Heights to Durobby Creek

See Tables 1 and 2 Appendix 1 for reasons that exclusion of depicted areas is unreasonable



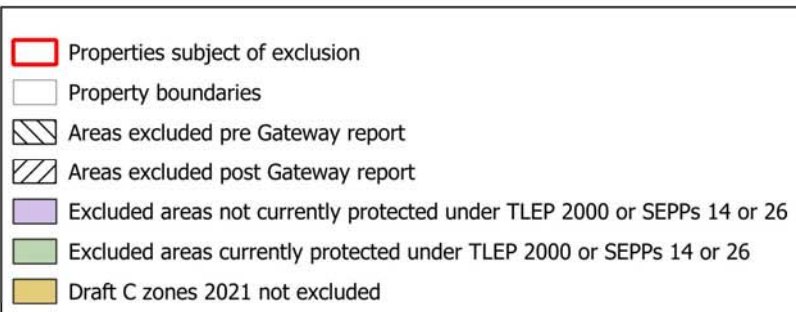
Map 4 Tweed Heads

See Tables 1 and 2 Appendix 1 for reasons that exclusion of depicted areas is unreasonable



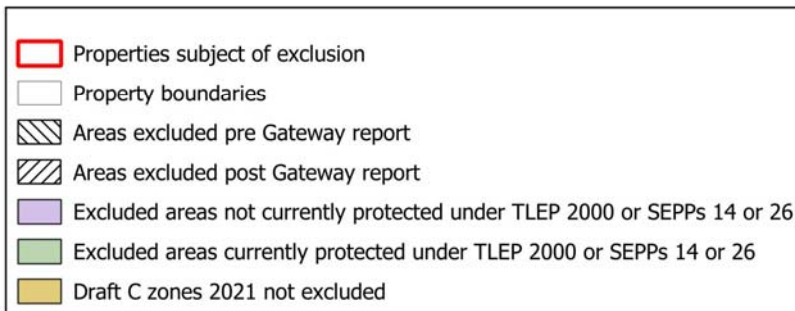
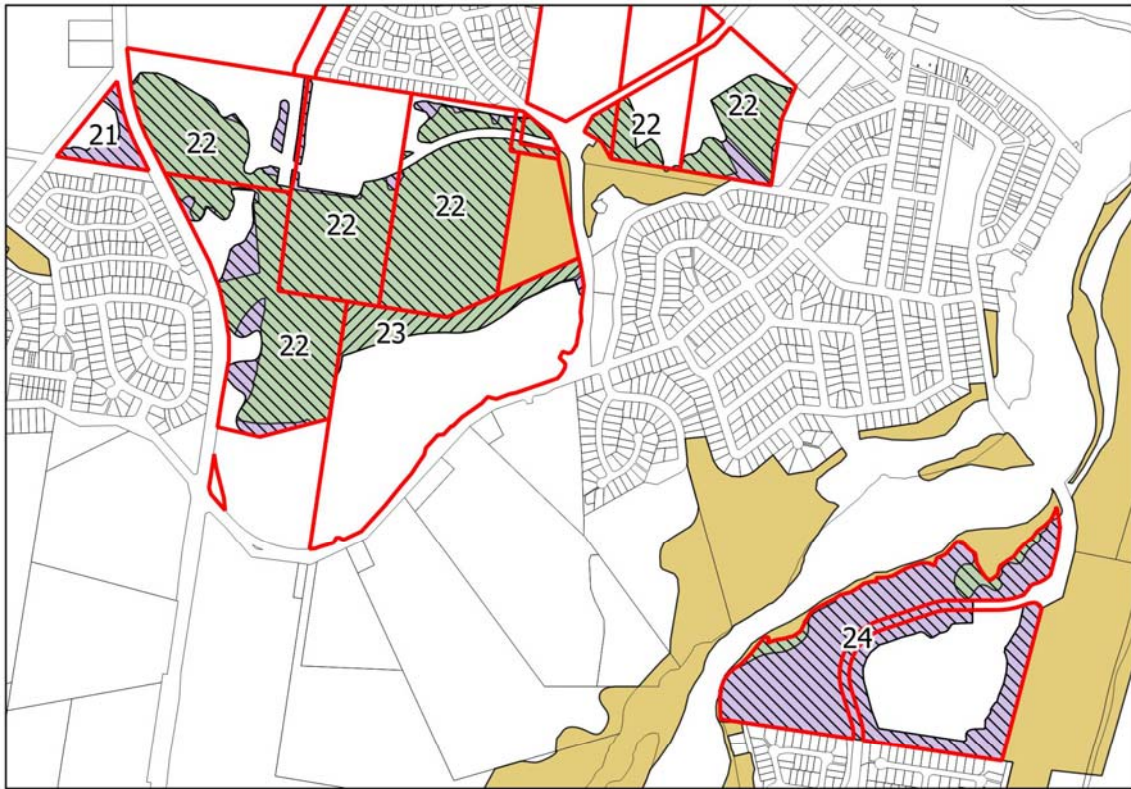
Map 5 Dry Dock Road and Letitia Spit

See Tables 1 and 2 Appendix 1 for reasons that exclusion of depicted areas is unreasonable



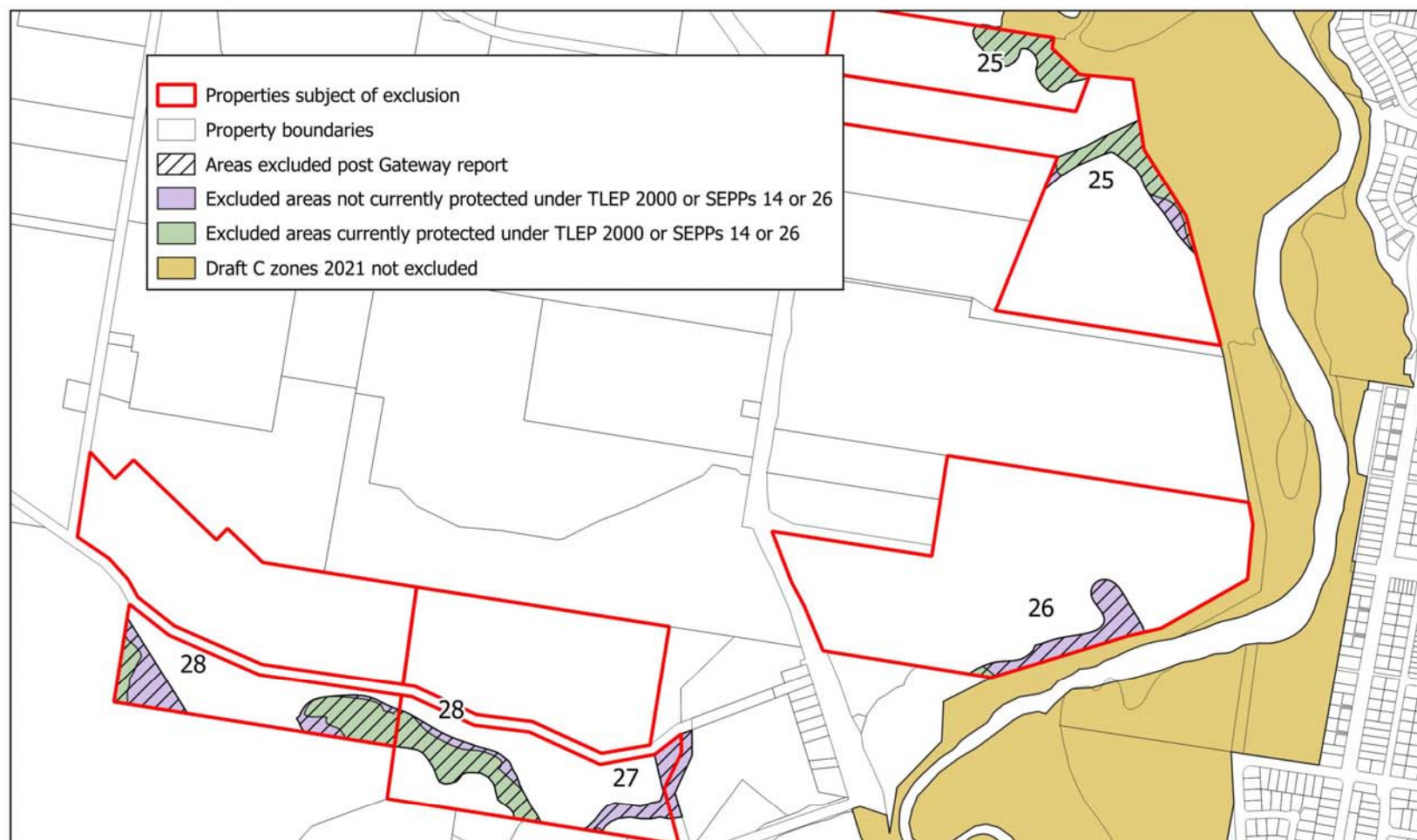
Map 6 Kingscliff

See Tables 1 and 2 Appendix 1 for reasons that exclusion of depicted areas is unreasonable



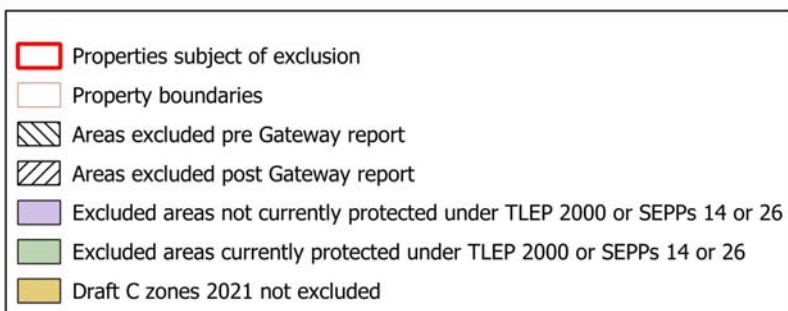
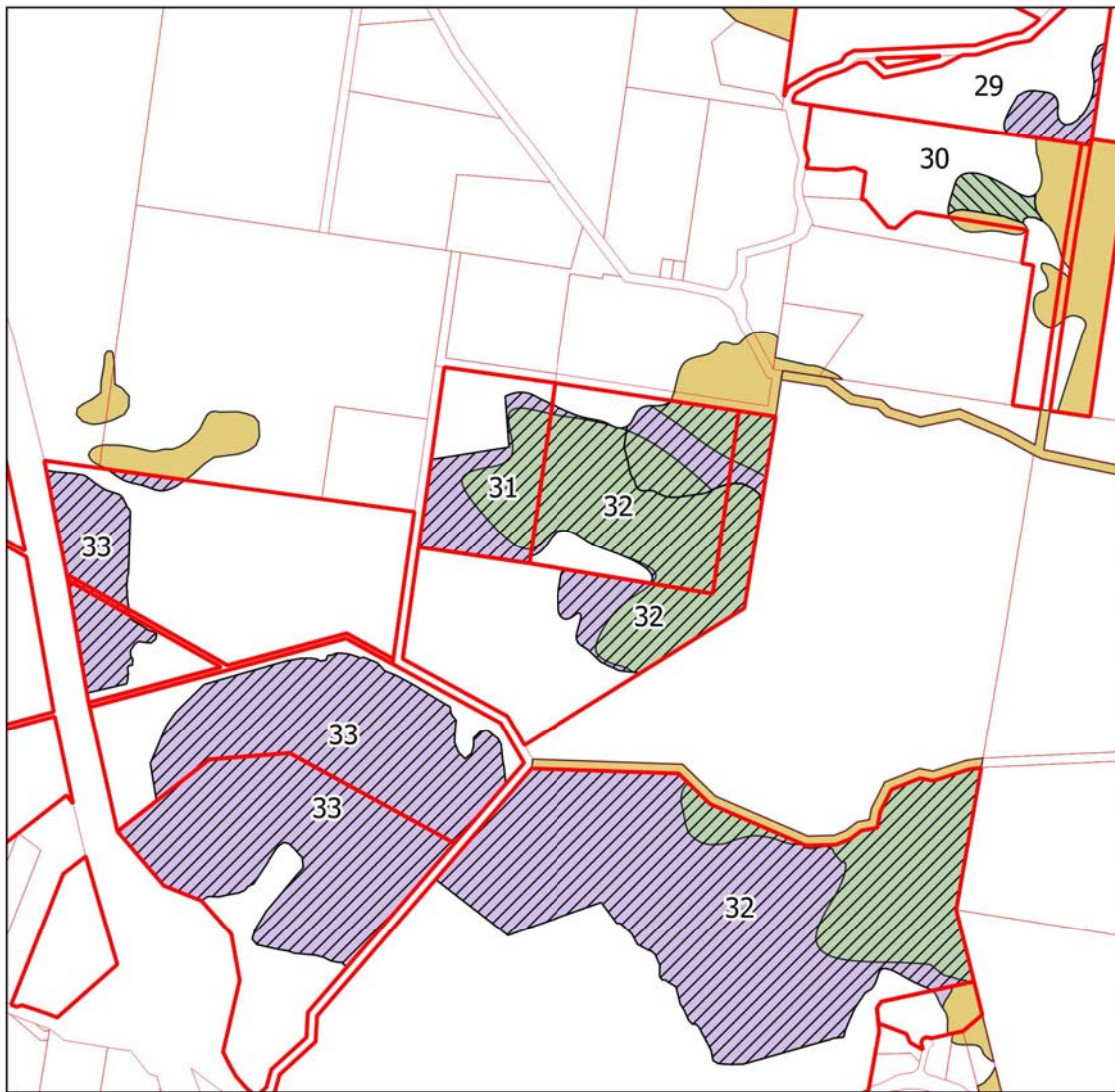
Map 7 Cudgen

See Tables 1 and 2 Appendix 1 for reasons that exclusion of depicted areas is unreasonable



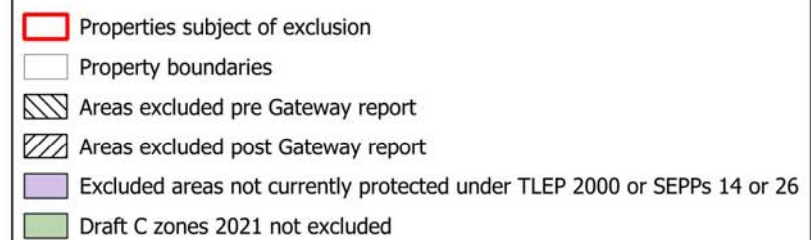
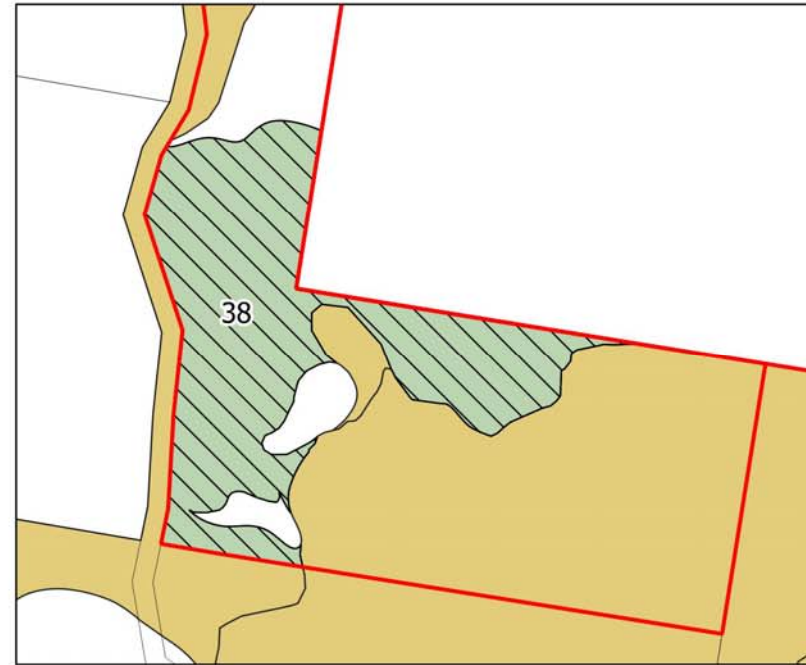
Map 8 Lower Cudgen Creek

See Tables 1 and 2 Appendix 1 for reasons that exclusion of depicted areas is unreasonable



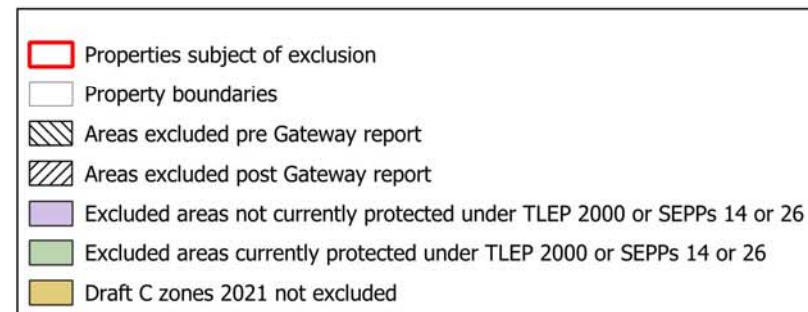
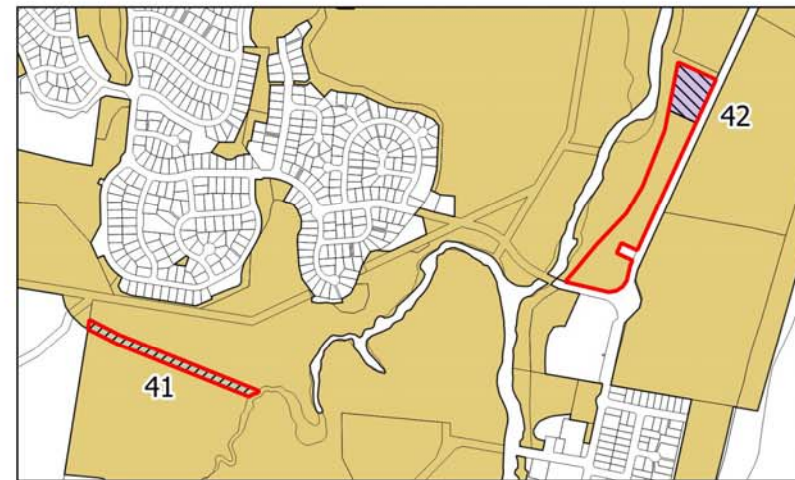
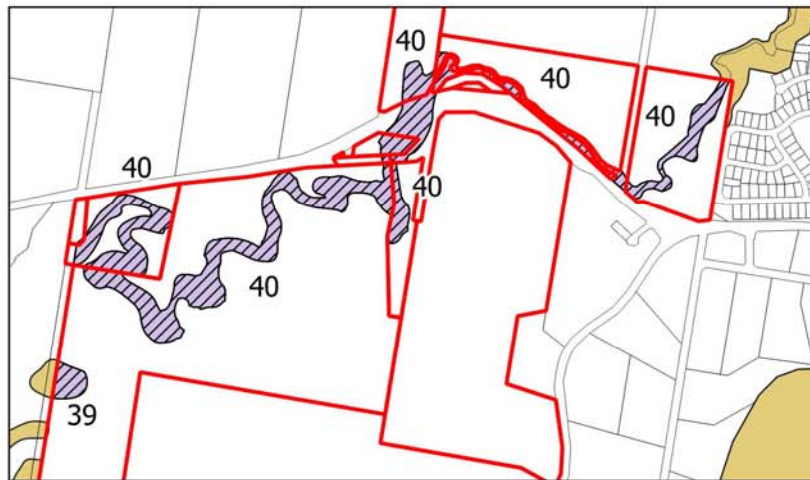
Map 9 Clothiers Creek Tanglewood

See Tables 1 and 2 Appendix 1 for reasons that exclusion of depicted areas is unreasonable



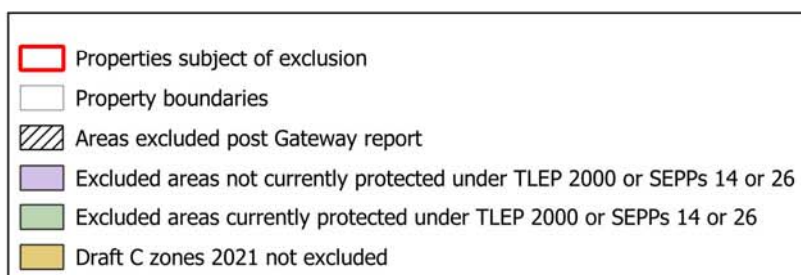
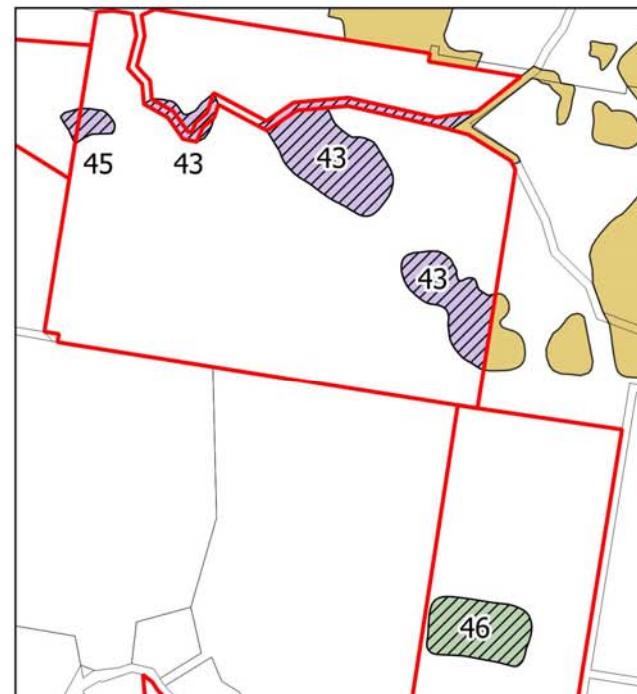
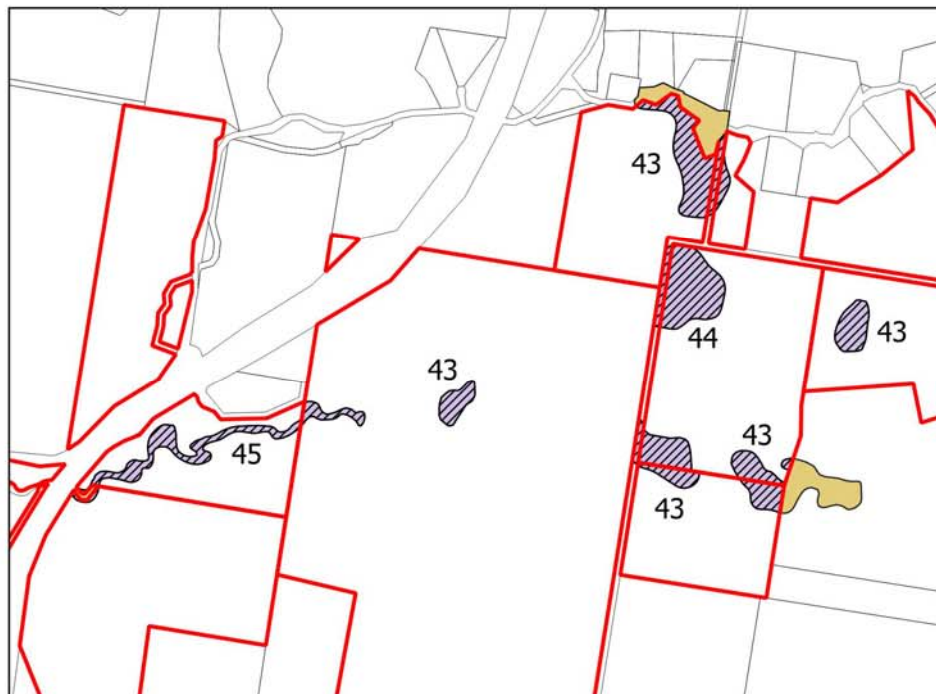
Map 10 Reserve Creek and Round Mountain

See Tables 1 and 2 Appendix 1 for reasons that exclusion of depicted areas is unreasonable



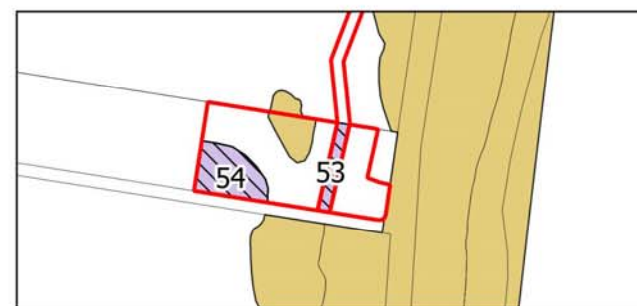
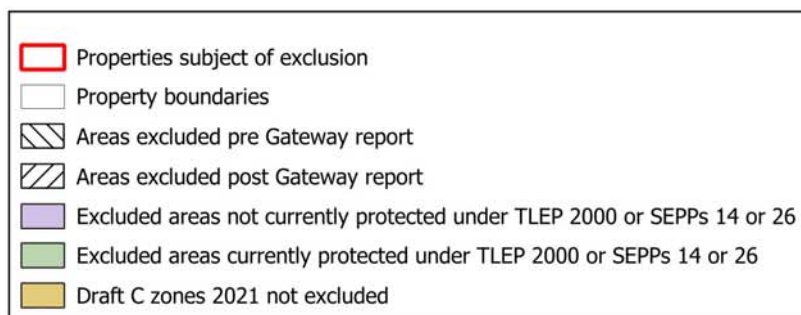
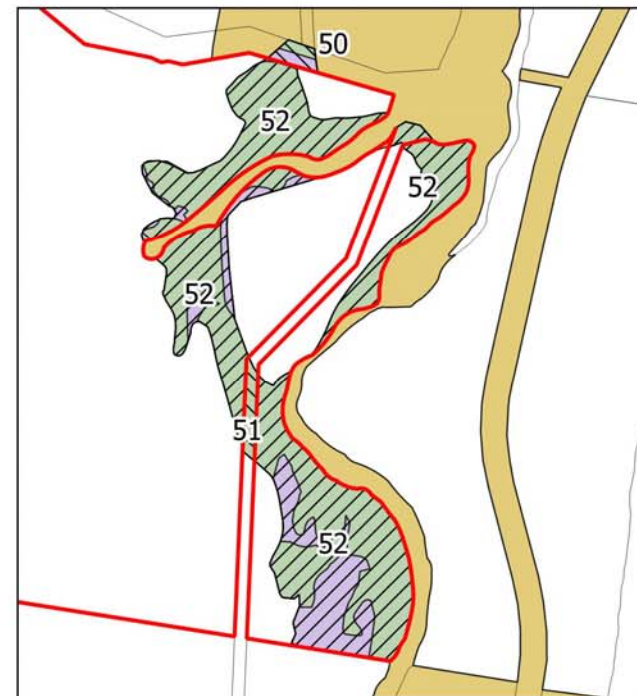
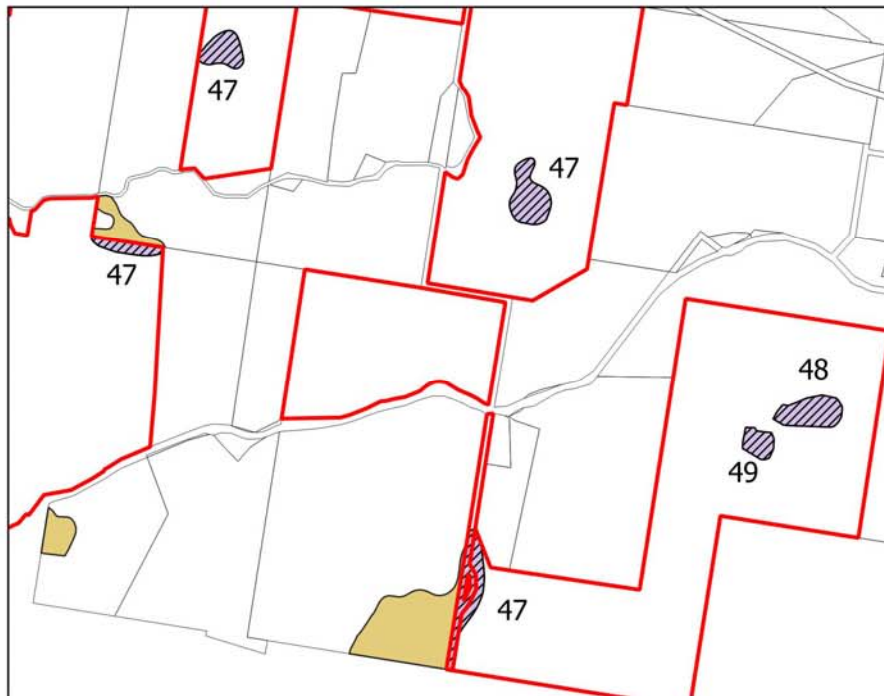
Map 11 Pottsville

See Tables 1 and 2 Appendix 1 for reasons that exclusion of depicted areas is unreasonable



Map 12 Lower Burringbar Creek Dunloe Park

See Tables 1 and 2 Appendix 1 for reasons that exclusion of depicted areas is unreasonable



Map 13 Wooyung Mooball Creek

See Tables 1 and 2 Appendix 1 for reasons that exclusion of depicted areas is unreasonable

APPENDIX 2

Two examples of rigid application of farmland map even where overlap is very small – resulting in exclusion of high conservation value public lands

Cobaki – Airport precinct

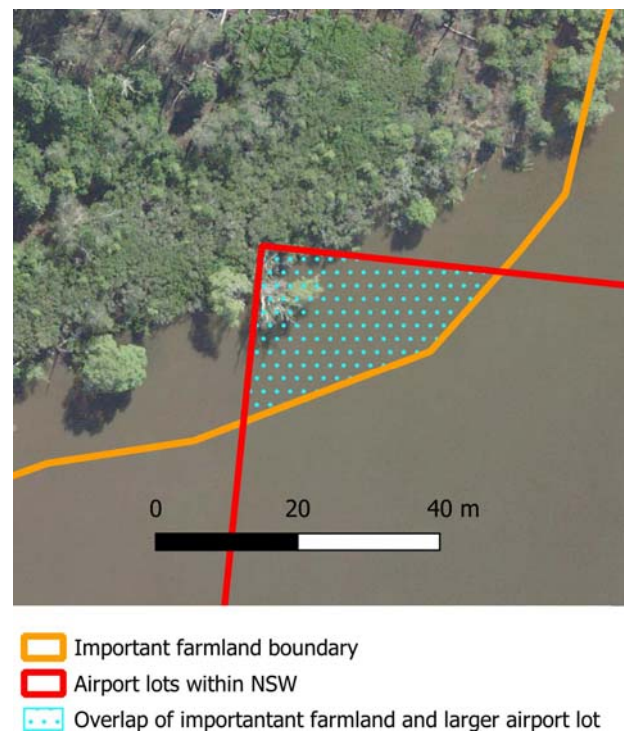


The Gold Coast airport precinct consists of two lots. The larger lot has been excluded because strictly speaking it overlaps the farmland map. The overlap is a mere 0.052 ha out of a total area of the lot of 231 ha.

Proposed C zoning in the smaller lot has not been excluded (at least for the moment) because it does not overlap the farmland map.

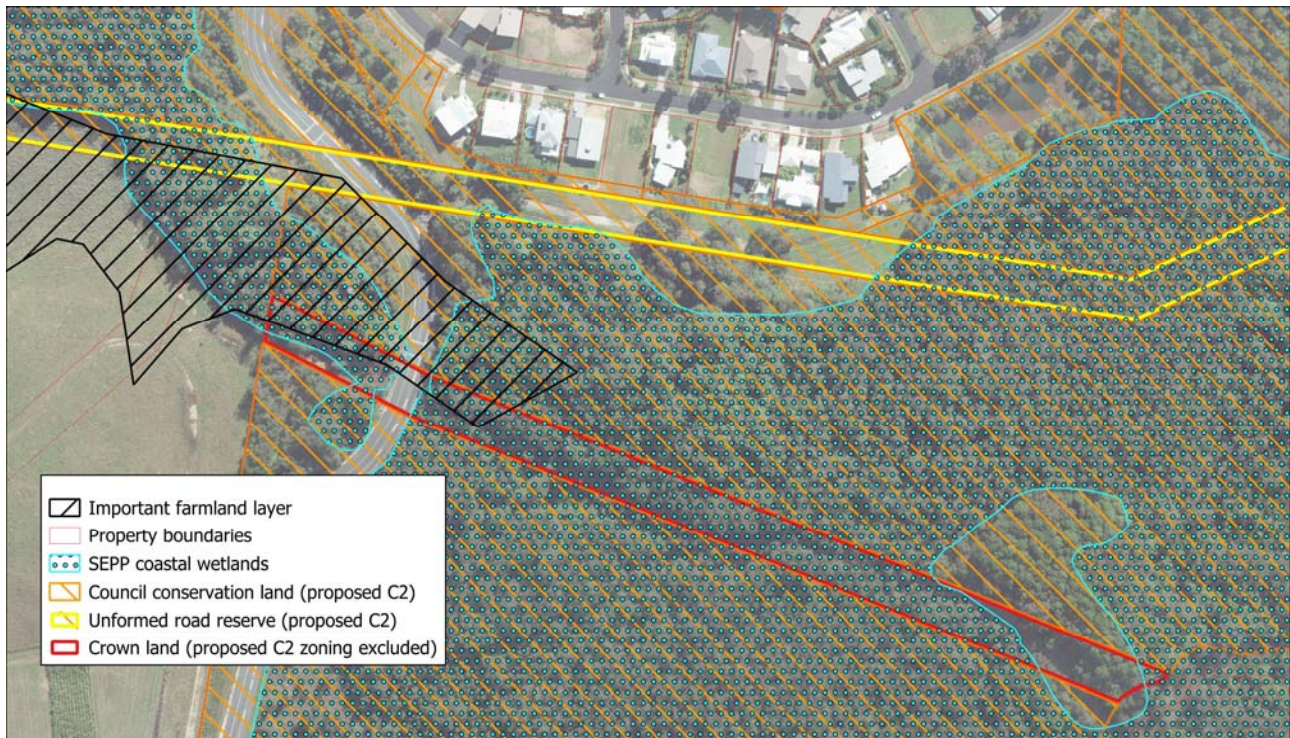
The part of the important farmland map that overlaps the airport precinct lot consists mainly of the tidal waters of Cobaki Broadwater. The remainder of the overlap consists of Grey Mangrove open woodland with a dense understorey of River Mangrove. (See figure to the right.)

Much of the excluded land is mapped in the SEPP coastal wetlands. A sizable part not in the SEPP is designated “National Estate”. It has had this status for a very long time, but it is not clear what the source of the designation is. The land clearly has a high conservation value.



APPENDIX 2 (continued)

Koala Beach - Pottsville



At the southern edge of Koala Beach at Pottsville, a crown land lot included in the Gateway submission has been deferred (area with red border) because of overlap with the important farmland map. The lot in question consists of a waterway that was originally excavated for farmland drainage purposes nearly a century ago but is now effectively a natural waterway. Problems shared with the airport precinct are:

- The overlap is relatively small (0.114ha of the total 0.998ha of the crown lot).
- Much of the small part that is covered by the important farmland map is waterway, not land and the balance consists of immediately adjacent bank.

Additional problems are:

- The crown land lot (which has an identifier) is treated differently from the unformed road reserve nearby to the north (outlined in yellow) which does not, even though they are both affected by the farmland overlay. There is no apparent reason this distinction should make any difference. (It is to be noted that publicly available databases indicate that at 2012 there was no proposal to sell off this crown land. Given its current use, it is extremely unlikely it would ever be sold off.)
- The crown land lot is treated differently from Council owned land immediately to the north and south despite the fact that both are affected by the farmland map and both are public land. In the case of the council land, it is classified as community land, not operational. Once again, the inconsistency is not explained.
- This crown lot is in effect a drainage reserve. It could be considered as being in the same class as roads reserves for the purpose of the directive that the part of road reserves that bisect land proposed for C zoning should be assigned C zoning also. If so, this represents yet another class of inconsistency that is unexplained.
- The lot is clearly of high conservation value – much of it is mapped within SEPP coastal wetlands.

APPENDIX 3

Exclusion of proposed C2 zoning in area governed by Tweed City Centre LEP 2012

In its Gateway Determination Report the DPHI claims there are reasons that “the proposed changes to Tweed City Centre LEP 2012 (should) be removed from this planning proposal”. The reasons given do not withstand scrutiny.

Five of the six relatively small areas subject of the TSC’s Gateway application are either crown land or land owned by TSC. Three of the five are mapped in the SEPP littoral rainforest. One of the two not mapped in the SEPP littoral rainforest was set aside for conservation purposes as part of the Anchorage development. All five are already zoned C2 and the only proposed change “of note” for these areas is a minor adjustment to the C2 table which would, as the DPHI has pointed out, remove “dual occupancies (attached) and dwelling houses” as consent uses. The prohibition of these uses is not an issue with regard to these five areas, given their tenure, current uses and very likely future uses.

The sixth area is also mapped in the SEPP littoral rainforest and consists of a mixture of crown and private land on Razorback. The crown land is currently zoned RE1 and the proposal is to zone part of it C2 and apply the proposed amended land use table. As for the five areas referred to above, there are no good planning for reasons to defer this part of the proposal, including the proposed change to the land use table for the C2 zone.

There are two classes of private land in the area on Razorback.

To the east a number of house lots are currently zoned R2 or R3. The proposal is to apply C2 zoning to the very steep part of these lots – the back part of their back yards. The existing housing and ancillary facilities are located on land that would retain its current urban zoning. The application of the proposed zone change and the change to the land use table would not adversely affect the part of these lots that are suitable for the current uses. Given the land on these lots proposed for C2 zoning is mapped in the SEPP littoral rainforest, there is no reasonable basis for the DPHI’s claim that “Council has not demonstrated that the use of this land specifically meets the requirements for the application of a conservation zone on these sites”.

The single private lot to the west of Razorback is currently entirely zoned C2 under Tweed City Centre LEP 2012. The proposal is to reduce C2 zoning to cover just the steep forested part of the lot, the part that is also mapped in the SEPP littoral rainforest. R5 zoning is proposed for part of the lot that is not extremely steep and is the location of existing housing and ancillary facilities. The proposed R5 zone and its land use table in TLEP 2014 answer concerns raised by the DPHI regarding existing use rights because dual occupancies (attached) and dwelling houses are allowed with consent. The DPHI says “this (the use of R5 zoning) is not considered appropriate in the context of the wider planning framework ” (provisions of the North Coast Regional Plan 2041 and consequent directives) and that “it is considered the proposal does not adequately address this inconsistency or justify the need for the use of the R5 zone in this area”. Given the small size of the area proposed for R5 zoning and the circumstances of the case (which include a proposed reduction in the area of C2 zoning) the DPHI objections thwart a reasonable planning solution for no good purpose. It is worth observing that it is almost certainly the case that dual occupancies (attached) and dwelling houses were allowed with consent in the C2 zone of Tweed City Centre LEP 2012 for no reason other than to deal with existing use rights on the subject block only, given that the other five occurrences of C2 zoning are all public land where residential development is not an issue.

In the DPHI Gateway Determination Report it is also said that “[u]ndertaking a separate planning proposal to amend the Tweed City Centre LEP 2012 is also considered more desirable to simplify the process, allow for a clearer, more targeted consultation with the community, assist the community in considering and assessing the changes to the Tweed LEP 2014 and ensure any proposed changes are consistent with the finalised Stage 1 proposal”. These are little more than bold, counterintuitive and unhelpful assertions.

APPENDIX 4

Council land at Koala Beach



These two areas are owned by TSC and are classified as community land (see Site Identification Map 025).

Area A is the site of the Koala research and rehabilitation centre and a plantation of Koala food trees which are harvested to feed Koalas in captivity on the site and elsewhere. It would seem to be appropriate to zone this site for environmental purposes, perhaps C3 management rather than C2 conservation.

The vegetation in area B is regenerating swamp forest and its regeneration is being assisted by Friends of Cudgen Nature Reserve. It would seem appropriate to zone this area C2.

APPENDIX 5

Important farmland mapping not of a quality that justifies the way the DPHI has directed that it be used

It would seem the DPHI has assumed TSC had not already taken the farmland map into account in deciding on areas suitable for C zoning as depicted in TSC's Gateway application. This appears to be an entirely wrong assumption. (See analysis in Appendix 1 above.)

It is not clear if TSC was aware of the limitations of the farmland map when it nonetheless proposed areas for C zoning that overlapped the map. In any event, given the limitations of the farmland map it is clear that it would be entirely inappropriate to automatically rule out overlapping proposed C zoning. The very serious limitations of the farmland mapping are set out below.

The original source of the Tweed section of the farmland map was a publication entitled "Soil Landscapes of the Murwillumbah – Tweed Heads 1:100,000 Sheet Report" authored by D. T. Morand and published by the Department of Land and Water Conservation, Sydney in 1996.

The publication includes a loose-sheet map which is drawn at a scale of 100,000. The map was also rendered into GIS format, probably as part of its preparation for publication. The GIS rendering of the map has been used by planners for various purposes for many years.

In the Tweed, a limited number of the soil landscape types in Morand were chosen to constitute the important farmland map. They are:

- Carool – landscape variant subtype (caa)
- Cobaki (cb)
- Crabbes Creek (cr)
- Cudgera (cd)
- Cudgen (cu)
- Tweed (tw)
- Tweed – landscape variant subtype (twb).

The farmland map has generally adopted the original GIS line work of Morand. Some minor edits to line work have been made at some locations, mainly to better portray the position of major roads and bodies of water. Parts of the included soil landscape types have also been excised, generally at the location of urban development that has taken place since the original publication or that is planned to take place.

The Morand map includes a warning that it "is only reliable at the published scale of 1:100,000". Assuming the lines on the map are 0.25mm wide, spatial error on this account alone could be in the order of 25 metres.

The line work in Morand was produced using stereoscopic interpretation of aerial photography, a technique that can also introduce considerable spatial error. Errors of this type can be judged in retrospect by checking the GIS version of the original line work over modern geo-referenced digital aerial photography that is of very high spatial accuracy. An accurate measure of this type of error can be made at locations where the boundary is distinct and stable. Examples are where a steep hillside consists of rock at or close to the surface and is bordered by either a body of water or plant communities that are distinctive in the modern aerial photography, such as mangroves or saltmarsh. Errors in the order of 50 metres can be commonly detected at these sorts of locations.

Another reason that care needs to be taken with the farmland mapping is that the position of boundaries between two soil landscape types are difficult to determine with any accuracy where the transition between the types is inherently diffuse. A position for the line could be placed hundreds of metres to one side or the other. For the purposes of the planning task at hand, this would be highly relevant where the boundary was between a soil landscape type included in the farmland map and one that is not.

Yet more reasons to be cautious in applying the Morand data are: (a) the relatively large size of many of the mapping units, (b) widely dispersed examples of each type have been bundled into a single soil landscape type and (c) only one soil sample was taken within one example of each type. A quite likely outcome is that the suitability of land for agriculture within a unit might vary greatly, and significant parts might be quite unsuitable. There are sizable areas never cleared of their native vegetation in the important farmland map or in other instances, sizable areas were cleared but were long ago abandoned to farming, in both cases because they are unsuitable for the purpose. The type location of the Cobaki (cb) soil landscape type illustrates the point. The unit is 630 ha in size. Morand took one soil sample at the southwestern end of this unit at a location that would appear to be the most fertile. Even there its agricultural use is not of a high order. It is used for grazing of beef cattle. Morand describes the Cobaki type as generally consisting of “closed [exotic] grassland and open rushland”. This is not a good description of the occurrence at Cobaki, about a third of which consists of a variety of types of native forest, woodland, heath (some with a woodland overstorey of Scribbly Gum), mangrove and brackish Swamp Oak open woodland with saltmarsh understorey. Many of these native vegetation types indicate the presence of soils and soil landscapes that are nothing like cb, are quite infertile and in some cases hostile to agriculture. Further, Morand signals that even significant parts of this soil landscape as he envisaged it may be unsuitable for agriculture, listing limitations such as: “permanently high water tables”, “[p]otential acid sulphate soil materials that are saline [and] waterlogged” and “high aluminium toxicity potential”.

It is worth observing that a very sizable part of the Cobaki occurrence of the cb soil landscape was zoned for urban purposes in the 1990s. Presumably planning authorities took a closer look at the farmland potential of this area than the DPHI and DPIRD now have, and concluded it had low farming potential.