

Proposed urban expansion to the Mooball village area

Proposal Title : **Proposed urban expansion to the Mooball village area**

Proposal Summary : **The proposal seeks to amend the Tweed Local Environmental Plan 2014 to permit residential development at 5861 & 5867 Tweed Valley Way, Mooball (Lot 2 DP 534493 and Lot 7 DP 593200).**

PP Number : **PP_2014_TWEED_003_00** Dop File No : **14/06534**

Proposal Details

Date Planning Proposal Received : **08-Apr-2014** LGA covered : **Tweed**

Region : **Northern** RPA : **Tweed Shire Council**

State Electorate : **TWEED** Section of the Act : **55 - Planning Proposal**

LEP Type : **Spot Rezoning**

Location Details

Street : **Tweed Valley Way**

Suburb : **Mooball** City : Postcode : **2483**

Land Parcel : **Lot 2 DP 534493 and Lot 7 DP 593200**

DoP Planning Officer Contact Details

Contact Name : **Luke Blandford**

Contact Number : **0266416612**

Contact Email : **luke.blandford@planning.nsw.gov.au**

RPA Contact Details

Contact Name : **Robyn Eisermann**

Contact Number : **0267025623**

Contact Email : **reisermann@tweed.nsw.gov.au**

DoP Project Manager Contact Details

Contact Name : **Tamara Prentice**

Contact Number : **0264166104**

Contact Email : **tamara.prentice@planning.nsw.gov.au**

Land Release Data

Growth Centre : **N/A** Release Area Name : **N/A**

Regional / Sub Regional Strategy : **Far North Coast Regional Strategy** Consistent with Strategy : **Yes**

Proposed urban expansion to the Mooball village area

MDP Number :

Date of Release :

Area of Release (Ha) : **79.00**

Type of Release (eg
Residential /
Employment land) :

Residential

No. of Lots : **0**

No. of Dwellings
(where relevant) : **270**

Gross Floor Area : **0**

No of Jobs Created : **10**

The NSW Government
Lobbyists Code of
Conduct has been
complied with : **Yes**

If No, comment : **Planning and Infrastructure's 'Code of Practice' in relation to communication and meetings with Lobbyists has been complied with to the best of the Region's knowledge.**

Have there been
meetings or
communications with
registered lobbyists? : **No**

If Yes, comment : **The Northern Region office has not met any lobbyists in relation to this proposal, nor has the Region been advised of any meeting between other officers within the agency and lobbyists concerning this proposal.**

Supporting notes

Internal Supporting
Notes :

- The site was the subject of a former Planning Proposal in January 2013 (Ref No. PP_2013_TWEED_001_00).
- Council requested withdrawal of the Planning Proposal following an objection from a landowner whose property formed part of the Planning Proposal in error.
- The proposal has been subject to ongoing review and modification following negotiations between the proponent, Council and the objecting landowner, whose land is an "island" within the development area.
- A request for a Pre-Gateway Review was submitted by the proponent to the agency in January 2014 due to Council's delay in finalising a revised Planning Proposal (PGR_2014_TWEED_001_00).
- The agency determined to not refer the Pre-Gateway Request to the JRPP for review, given that Council had indicated support for the proposal and was intending to submit a Planning Proposal to the agency shortly.
- Given the history and local contention regarding the Planning Proposal, it is submitted to the LEP Panel for review.

External Supporting
Notes :

Adequacy Assessment

Statement of the objectives - s55(2)(a)

Is a statement of the objectives provided? **Yes**

Comment : **The objectives and intended outcomes of the proposal are provided and adequately expressed. The proposal seeks to amend the Tweed LEP 2014 to enable urban expansion of the Mooball village area.**

Explanation of provisions provided - s55(2)(b)

Is an explanation of provisions provided? **Yes**

Comment : **The Planning Proposal provides a clear explanation of the intended provisions to achieve**

the objectives and intended outcomes.

The majority of the land is zoned RU2 Rural Landscape under the Tweed LEP 2014. Residential development is not permitted within the RU2 zone. A 40ha minimum subdivision standard also applies to the rural zoned land. A small portion of RU5 Village zoned land is located within the northern portion of the site with a 450m2 minimum lot size provision.

The proposal seeks the following land use zones for the 79ha site:

- RU2 Rural Landscape – 5.5ha
- R5 Large Lot Residential – 28.5ha
- RU5 Village – 29.5ha
- E3 Environmental Management – 15.5ha

Minimum lot size provisions between 450m2 – 5ha are proposed to permit the intended outcomes.

Current and proposed zoning plans are attached for reference.

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **No**

b) S.117 directions identified by RPA :

* May need the Director General's agreement

1.2 Rural Zones

1.3 Mining, Petroleum Production and Extractive Industries

1.5 Rural Lands

2.1 Environment Protection Zones

2.3 Heritage Conservation

2.4 Recreation Vehicle Areas

3.1 Residential Zones

3.3 Home Occupations

3.4 Integrating Land Use and Transport

4.3 Flood Prone Land

4.4 Planning for Bushfire Protection

5.1 Implementation of Regional Strategies

6.1 Approval and Referral Requirements

6.2 Reserving Land for Public Purposes

6.3 Site Specific Provisions

Is the Director General's agreement required? **Yes**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **Yes**

d) Which SEPPs have the RPA identified?

SEPP No 44—Koala Habitat Protection

SEPP No 55—Remediation of Land

SEPP (Rural Lands) 2008

e) List any other matters that need to be considered :

An assessment of the applicable directions and SEPPs is provided within the 'Assessment' section of this planning team report.

Have inconsistencies with items a), b) and d) being adequately justified? **Yes**

If No, explain :

See the 'Assessment' section of this planning team report.

Mapping Provided - s55(2)(e)

Is mapping provided? **Yes**

If No, comment :

The Planning Proposal has included mapping that clearly identifies the site and proposed LEP amendment. This includes maps which indicate the proposed land use zones and minimum lot size provisions.

The mapping provided is at an appropriate scale and contains sufficient information to explain the effect of the proposal. The mapping currently contains outdated reference to the former Draft Tweed LEP 2010. This is required to be updated prior to public exhibition to reference the correct Tweed LEP 2014.

Further revised maps which comply with the department's 'Standard Technical Requirements for LEP Maps' would need to be prepared for the making of the LEP.

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : **The Planning Proposal has indicated a 28 day public exhibition/community consultation period.**

A 28 day exhibition period is considered appropriate given that the proposal seeks to expand the Mooball village area over land that is currently zoned for rural purposes and also adjoins land zoned for rural purposes.

Additional Director General's requirements

Are there any additional Director General's requirements? **No**

If Yes, reasons : **DELEGATION AUTHORISATION**
Tweed Shire Council has not formally accepted plan-making delegations for Planning Proposals and has not requested delegation for this Planning Proposal.

Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? **Yes**

If No, comment : **The Planning Proposal generally satisfies the adequacy criteria by:**

- 1. Providing appropriate objectives and intended outcomes;**
- 2. Providing a suitable explanation of the provisions proposed by the Planning Proposal to achieve the outcomes;**
- 3. Providing an adequate justification for the proposal;**
- 4.. Providing maps which suitably identify the site and intended outcomes;**
- 5. Outlining a proposed community consultation program including a 28 day public exhibition period; and**
- 6. Providing a project timeframe which suggests completion within 12 months.**

PROJECT TIMELINE

The RPA's timeline anticipates the Planning Proposal will be submitted to the agency for finalisation in 48 weeks (less than 12 months). A 12 month timeframe is considered appropriate given the proposal relates to an urban release area, the anticipated community interest and that a Planning Agreement is needed to be negotiated regarding local infrastructure provision (this matter is discussed further within this planning team report).

Proposal Assessment

Principal LEP:

Due Date : **April 2014**

Comments in relation to Principal LEP : **The Tweed LEP 2014 was made on the 3 April 2014, the same day that the subject Planning Proposal was forwarded by the RPA.**

The Planning Proposal confirms the land use zones and minimum lot size provisions proposed for the land under both the Tweed LEP 2014 and now superseded Tweed LEP 2000. The Gateway could condition that all references to the Tweed LEP 2000 be removed and all references to the Draft LEP be updated to correctly reference Tweed LEP 2014 prior to exhibition.

It is noted that the Planning Proposal seeks to apply an 'E' zone for parts of the site. 'E' zones are currently deferred from all SI LEPs in the Far North Coast. The Gateway could suggest that the RPA consider applying an appropriate alternative zone for the intended conservation areas, such as RU1 or similar, or defer the proposed conservation areas until the conclusion of the 'E' zone review.

Assessment Criteria

Need for planning proposal :

The Planning Proposal is in response to the land being identified for short term urban release under the 'Tweed Urban Land Release Strategy 2009'(Area 9).

The expansion of the Mooball village area would provide between 250-300 dwellings, increasing housing and lifestyle choice in the locality, and contribute to urban land supply in the Tweed LGA.

The current RU2 Rural Landscape zone and 40ha minimum lot size provision, which apply to the majority of the land, do not permit residential development. The proposal therefore seeks to amend these provisions to permit urban release.

The proposed zones and minimum lot size provisions have been informed by specialist site investigations, concept master planning and negotiations between the RPA, proponent and community members.

The proposed changes to the LEP are the most appropriate means of achieving the desired outcomes for the proposal.

Consistency with strategic planning framework :

FAR NORTH COAST REGIONAL STRATEGY (FNCRS)

The FNCRS was released in 2007 and identifies the Government's key strategic directions for the Far North Coast.

The site is not located within the Town and Village Growth Boundary (TVGB) identified in the FNCRS but is located outside of the Coastal Zone. In these circumstances the Sustainability Criteria under the FNCRS can be considered.

The proposal satisfies the Sustainability Criteria, providing housing and economic opportunity on land that adjoins existing residential development, can be serviced and is not environmentally constrained to an extent that would preclude its development. Further design review may identify required development responses to ensure the Criteria are maintained. This can be informed through the Development Application process.

TWEED URBAN AND EMPLOYMENT LAND RELEASE STRATEGY 2009

The Tweed Urban and Employment Land Release Strategy 2009 provides a residential land release program for Tweed Shire until 2031. It was adopted by Tweed Shire Council on 17 March 2009, however was not sent to the Director General for endorsement.

As mentioned above, the site is located within an area identified under the Strategy for short term urban release (Area 9). Release of the site for urban purposes is consistent with the Strategy.

STATE ENVIRONMENTAL PLANNING POLICIES

SEPP 55 – Remediation of Land

This SEPP requires an RPA to appropriately consider the potential for contamination prior to rezoning land.

The land has historically been used for agricultural purposes (grazing and crop growing). A Stage 1 Contamination Investigation has been undertaken to inform the preparation of the Planning Proposal. This Stage 1 investigation has identified potentially contaminated soils associated with the former agricultural activities on the land. It confirms that potential site contamination is not a constraint that would preclude use of the site for future residential purposes.

The Stage 1 investigation has indicated that further site testing and possible remediation works would be required prior to development occurring on the site. This should not preclude consideration of the site for rezoning.

The proposal is consistent with the provisions of all other applicable SEPPs relevant to the site.

SECTION 117 DIRECTIONS

1.2 Rural Zones

The proposal is considered inconsistent with this direction as it proposes to rezone land from rural to residential. The inconsistency can be justified, given the proposal satisfies the Sustainability Criteria under the FNCRS.

3.1 Residential Land

The proposal is considered inconsistent with this direction as it seeks to rezone approximately 1,000m² from rural village to environmental protection. The proposed rezoning has been informed by an Ecological study. The inconsistency can be justified, given that a site specific study has identified this small portion of residential zoned land as having environmental protection value. Furthermore, the proposal seeks to significantly increase dwelling permissibility in the locality.

4.3 Flood Prone Land

The proposal is considered inconsistent with this direction as part of the site is identified as being subject to flooding under Tweed Shire Council's Flood Maps. The RPA has indicated that the proposal can comply with the Tweed Floodplain Risk Management Plan, which has been prepared in accordance with the principles and guidelines of the Floodplain Development Manual 2005. The proposal's inconsistency with this direction can therefore be justified.

4.4 Planning for Bushfire Protection

A portion of the site is identified as bushfire prone. A Bushfire Assessment has been undertaken on the site which has informed the proposed land use/minimum lot size provisions.

The direction requires an RPA to consult with the Commissioner of the NSW Rural Fire Service (RFS). Consultation with the RFS can be undertaken post Gateway. Consistency with this direction is currently unresolved.

The proposal is consistent with all other relevant Section 117 Directions.

Environmental social
economic impacts :

The Planning Proposal has been informed by a number of site investigations/studies, to an extent that the proposed land use and minimum lot size provisions respond directly to the recommendations of these studies. Land use zones are proposed to permit residential development on land identified to be unconstrained, protect identified key natural resources, accommodate flood mitigation works and protect rural amenity, while lot size provisions have been proposed to respond to topography, bushfire and land use conflict requirements.

These site specific studies satisfy the strategic and statutory considerations for the land at this stage in the development process. It should be noted that a copy of these investigations were provided to the agency as part of the Pre-Gateway Review however did not form part of the submitted Planning Proposal package. The Gateway could condition that all site investigation studies be exhibited with the Planning Proposal.

In addition to the existing studies, the Planning Proposal indicates that the RPA requires further site investigations and studies be undertaken prior to public exhibition. It is considered that should the RPA require site specific investigations in addition to what has already been undertaken, the completion of these studies should not delay the timeframe prescribed by the Gateway for completing the LEP. This matter is discussed below with regard to the key environmental, social and economic considerations.

Biodiversity

The site generally comprises open grassland. Ecologically significant areas have been identified and mapped and are generally restricted to the south and western portions of the site. Numerous remnant vegetation communities are scattered throughout. Two natural drainage lines traverse the northern portion of the site.

The proposal seeks to retain these significant natural resources within proposed conservation and rural land use zones.

The Planning Proposal confirms that further investigation and recording is required to ensure minimal impact on ecological values and that this can be undertaken at design stage under a DA.

Topography

The site is undulating with slope angles varying from below 0.5% to greater than 35%. Low lying/flat land is located within the northern portion of the site.

The preliminary geotechnical study undertaken as part of the proponent's original rezoning request, and referenced in the Planning Proposal, confirmed that no significant physical evidence was observed which indicated that development should not occur on the site.

It is noted that further review would be required to determine detailed design outcomes for the land. This should not preclude consideration of the site for rezoning. The Planning Proposal indicates however, that the RPA requires further geotechnical study prior to public exhibition.

Land Contamination

As mentioned previously, the land has been identified to contain areas of contamination which will require remediation prior to residential development.

Further assessment would be required to determine the extent of contamination and remediation action works. This should not preclude consideration of the site for rezoning. The Planning Proposal has indicated however that the RPA requires further contamination studies prior to public exhibition.

Bushfire

The south west and southern portions of the site are identified as Bushfire Prone. Land use and minimum lot size provisions have been applied across the site to ensure APZs can be provided in the future subdivision design.

Consistency with the NSW RFS Planning for Bushfire Protection can be addressed at design stage under a DA. This should not preclude consideration of the site for rezoning. The Planning Proposal has indicated however that the RPA requires further studies regarding bushfire protection prior to exhibition.

Flooding

The northern portion of the site is flood prone and appropriate flood management measures would be required to ensure existing and future development is not detrimentally impacted.

A preliminary flood and drainage assessment was submitted as part of the original rezoning request to the RPA. Land use and minimum lot size provisions have been proposed responding to the outcomes of this study. The Planning Proposal confirms that development of the site can comply with Tweed Shire Council's design guidelines.

Detailed flood modelling and appropriate design responses would be required to ensure any proposed filling or works do not impact adjoining land. This should not preclude consideration of the site for rezoning. The Planning Proposal has indicated however that the RPA requires detailed flood modelling prior to public exhibition.

Aboriginal and Cultural Heritage

The potential to impact any Aboriginal and Cultural Heritage items/areas has been considered in a site specific review. No significant European or Aboriginal cultural items were identified. This report concluded that there is negligible potential for any Aboriginal cultural heritage significance. The Tweed Byron Local Aboriginal Land Council reviewed the report and did not object to the proposal.

Further testing and unexpected finds protocols can be required under any future development consent. This is consistent with the recommendations of the Tweed Byron Local Aboriginal Land Council. The Planning Proposal has indicated however that further site testing will be required under a Planning Agreement between Tweed Shire Council and the proponent.

Electrical, Water & Telecommunication Services

Electricity and telecommunication services can be provided to the site via extensions to existing services. Potable water can be provided to the site via a private water utility facility and/or extensions to existing water mains under Tweed Valley Way.

Waste Water

A private waste water facility/sewage treatment plant (STP) or augmentation to Tweed Shire Council's existing waste water treatment plant is required to service the development. The Planning Proposal confirms that Tweed Shire Council and the proponent will enter into a Planning Agreement to ensure the provision of appropriate waste water treatment.

Traffic and Access

The Planning Proposal confirms that Tweed Valley Way and the wider road network have capacity to accommodate the projected additional traffic generation. Assessment of detailed road design, layout and intersection treatment can be considered at DA stage.

SOCIAL & ECONOMIC CONSIDERATIONS

The Mooball village area adjoins the site to the north and comprises less than 50 residential dwellings, a pub, café, corner store and petrol station.

Development of the site for urban purposes would yield approximately 250-300 dwellings as well as small scale retail and service opportunity, contributing to housing, lifestyle choice and economic activity within the Tweed.

Lot B DP 419641 is located within the north eastern portion of the site. Lot B (700m²) is currently utilised for the breeding and keeping of animals. The owners of Lot B object to the proposal, concerned that development of the site would result in a loss of rural amenity and ability to continue these breeding operations.

Negotiations between the proponent, owner of Lot B and the RPA have been ongoing in attempt to mitigate/minimise the concerns being raised. This has included the preparation of a Land Use Conflict Risk Assessment. A rural land use zone is proposed surrounding Lot B to accommodate buffers to minimise potential land use conflict. A number of other commitments are being negotiated with the owner of Lot B in an attempt to satisfy concerns that relate to ongoing land management and access.

At this stage in the rezoning process, the Planning Proposal must be considered on its merits. Public exhibition of the proposal would provide additional opportunity for broader public comment and input. Concerns raised in any submission can then be addressed if deemed necessary via amended land use zone/lot size boundaries or by way of a condition on any future development consent. The Planning Proposal has indicated however that a revised Land Use Conflict Risk Assessment and associated DCP will be required prior to public exhibition.

Assessment Process

Proposal type : **Routine** Community Consultation Period : **28 Days**

Timeframe to make LEP : **12 months** Delegation : **DDG**

Public Authority **Office of Environment and Heritage**
Consultation - s56(2)(d) : **NSW Rural Fire Service**

Is Public Hearing by the PAC required? **No**

(2)(a) Should the matter proceed ? **Yes**

If no, provide reasons :

Resubmission - s56(2)(b) : **No**

If Yes, provide reasons :

Identify any additional studies, if required :

If Other, provide reasons :

As discussed previously, the Planning Proposal has been informed by a number of specialist site investigations and studies. These studies are sufficient to determine that the proposal is consistent with the relevant strategic and statutory requirements at this stage of the development process. A copy of each of these studies should be exhibited with the Planning Proposal to allow review by the community and any public referral agency.

The Planning Proposal has indicated however that further detailed site investigations will be required prior to public exhibition. The RPA has indicated that it is currently determining the scope of these additional investigations. The Gateway could condition that completion of any site specific investigations, as required by the RPA, should not delay the timeframe for finalising the LEP.

Identify any internal consultations, if required :

No internal consultation required

Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons : **The Planning Proposal confirms that the provision of required utility infrastructure can be achieved at the cost of the proponent.**

Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

S.117 directions :
1.2 Rural Zones
1.3 Mining, Petroleum Production and Extractive Industries
1.5 Rural Lands
2.1 Environment Protection Zones
2.3 Heritage Conservation
2.4 Recreation Vehicle Areas
3.1 Residential Zones
3.3 Home Occupations
3.4 Integrating Land Use and Transport
4.3 Flood Prone Land
4.4 Planning for Bushfire Protection
5.1 Implementation of Regional Strategies
6.1 Approval and Referral Requirements
6.2 Reserving Land for Public Purposes
6.3 Site Specific Provisions

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Additional Information :	It is recommended that the Planning Proposal should proceed as a "routine" Planning Proposal. The Director-General's delegate should agree that inconsistencies with s117 Directions 1.2 Rural Zones, 3.1 Residential Land and 4.3 Flood Prone Land have been justified. Delegation to finalise the LEP should not be issued to the RPA. The Planning Proposal should proceed subject to the following conditions: 1. Prior to undertaking community consultation, the RPA should update the planning proposal to: - remove all reference to provisions under the superseded Tweed LEP 2000; - update all references to the Draft LEP to Tweed LEP 2014; and - apply an appropriate alternative zone for the intended conservation areas, such as RU1 or similar or seek to defer the proposed conservation areas until the conclusion of the 'E' zone review. 2. All site investigation studies which have been prepared to inform the Planning Proposal should be exhibited with the Planning Proposal. 3. The completion of any site specific study, as required by the RPA, should not delay the finalisation of the LEP beyond the timeframe specified by the Gateway. 4. A community consultation period of 28 days is necessary. 5. Consultation is required with the NSW Rural Fire Service to comply with the requirements of s117 Direction 4.4 Planning for Bushfire Protection 6. Consultation should be undertaken with the Office of Environment and Heritage given the existing natural resources, flooding constraints and planned environmental protection zones. 7. The Planning Proposal is to be completed within 12 months.
Supporting Reasons :	The reasons for the above recommendations for the Planning Proposal are as follows: 1. Release of the land for urban purposes will provide housing and economic opportunity in line with the RPA's Urban Land Release Strategy. 2. The inconsistencies with the s117 Directions are justified by a study and/or are of minor significance. 3. Consistency with s117 4.4 Planning for Bushfire Protection is currently unresolved until consultation has occurred with the NSW Rural Fire Service. 4. The proposal is otherwise consistent with all relevant local and regional planning strategies, s117 Directions and SEPPs. 5. The recommended conditions to the Gateway are required to provide adequate consultation, accountability and progression.

Panel Recommendation

Recommendation Date :	17-Apr-2014	Gateway Recommendation :	Passed with Conditions
Panel Recommendation :	1. Prior to undertaking public exhibition, Council is to update the planning proposal to: • Remove the proposed E3 Environmental Management zone and apply an appropriate alternative zone or defer the proposed conservation areas until the review of Standard Instrument Environmental Zones is complete; and • Remove all reference to provisions under superseded Tweed LEP 2000 and update references to Tweed LEP 2014. 2. The specialist site investigations and studies prepared to date are satisfactory for the purposes of public exhibition. All studies which have been prepared to inform the planning proposal should be exhibited with the planning proposal. 3. The completion of any further site specific studies as required by Council should not delay the finalisation of the LEP beyond the 12 month timeframe specified by the Gateway determination. 4. Community consultation is required under sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") as follows:		

- the planning proposal must be made publicly available for a minimum of 28 days; and
- the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of A Guide to Preparing LEPs (Planning and Infrastructure 2013).

5. Consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act and/or to comply with the requirements of relevant S117 Directions:

- Office of Environment and Heritage
- NSW Rural Fire Service (S117 Direction 4.4 Planning for Bushfire Protection)

Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material, and given at least 21 days to comment on the proposal.

6. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).

7. The timeframe for completing the LEP is to be 12 months from the week following the date of the Gateway determination.

Council has not formally accepted plan making delegation.

Gateway Determination

Decision Date : **01-May-2014** Gateway Determination : **Passed with Conditions**

Decision made by : **Deputy Director General, Growth Planning and Delivery**

Gateway Determination : **The Planning Proposal should proceed subject to the following variation and conditions:**

1. Prior to undertaking public exhibition, Council is to update the planning proposal to:
 - Remove the proposed E3 Environmental Management zone and apply an appropriate alternative zone or defer the proposed conservation areas until the review of Standard Instrument Environmental Zones is complete; and
 - Remove all reference to provisions under superseded Tweed LEP 2000 and update references to Tweed LEP 2014.
2. The specialist site investigations and studies prepared to date are satisfactory for the purposes of public exhibition. All studies which have been prepared to inform the planning proposal should be exhibited with the planning proposal.
3. The completion of any further site specific studies as required by Council should not delay the finalisation of the LEP beyond the 12 month timeframe specified by the Gateway determination.
4. Community consultation is required under sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") as follows:
 - the planning proposal must be made publicly available for a minimum of 28 days; and
 - the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of A Guide to Preparing LEPs (Department of Planning and Environment 2013).
5. Consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act and/or to comply with the requirements of relevant S117 Directions:
 - Office of Environment and Heritage

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- NSW Rural Fire Service (S117 Direction 4.4 Planning for Bushfire Protection)

Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material, and given at least 21 days to comment on the proposal.

6. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).

7. The timeframe for completing the LEP is to be 12 months from the week following the date of the Gateway determination.

Exhibition period : **28 Days**

Gateway Timeframe : **12 months**

Extension Timeframe : **21 months**

Total Timeframe : **33 months**

Proposal Due Date for Finalisation: **08-Feb-2017**

Status: **On-time**

Revised Determination (e.g. Extensions & Alterations):

**Extension granted 1/5/15 due developer financing and need to complete Voluntary Planning Agreement and Aboriginal heritage report.
Further extension granted 2/2/16 to facilitate addressing of the community consultation feedback and developing a Voluntary Planning Agreement
2016-11-09 Gateway Extension for 3 months until 8 February 2017**

Implementation

Gateway effective date : **08-May-2014**

Exhibition start date : **30-Jul-2014**

Exhibition end date : **29-Aug-2014**

Exhibition duration : **31**

Public hearing :

Date :

Date advice received from RPA : **21-Sep-2016**

Days with RPA : **868**

LEP Assessment

Days with DoP : **23**

Number of submissions : **36**

Additional studies conducted : **Yes**

Agency consultation consistent with recommendation : **Yes**

If No, comment :

The Gateway determination required consultation with

- Office of Environment and Heritage, and
- NSW Rural Fire Service

The Rural Fire Service (RFS) originally requested further information addressing

the s117 direction and compliance with Planning for Bushfire Protection 2006. The RFS subsequently issued a letter on 5 December 2014 confirming that it had no objection to the planning proposal.

The Office of Environment and Heritage provided in principle support to the proposal. It did however request an E3 zone be applied along the southern boundary of the site and that Council give further consideration to flooding prior to the making of the LEP amendment. Council has addressed these comments appropriately and this is discussed further below in relation to environmental zones and flooding.

Agency Objections :

No

If Yes, comment :

No agency has objected to the proposal.

Documentation consistent with Gateway :

Yes

If No, comment :

The proposal is consistent with the Gateway determination (as altered) including the changes that were required to be made prior to community consultation.

Community consultation was undertaken between 30 July and 29 August 2014. There were thirty six (36) public submissions received during this period.

The main issues raised in submissions were

1. Flooding,
2. Impact on rural character,
3. Sewerage disposal,
4. Land contamination,
5. Land slip, and
6. Proximity of Mooball from services/employment and associated sustainability issues.

Council has addressed these matters as follows:

- Flooding

A part of the proposed expansion area is within the flood planning area. A concept flooding report has been submitted which indicates that any future development could be designed to accommodate the existing and additional flood waters running through the site through compensatory flood storage on site, improved conveyance capacity and filling of the subject land. Some of the flood affected land has also been deferred from the release area and retains its existing RU2 zoning. It is also noted that Tweed LEP 2014 contains appropriate flood control provisions that can address this matter further at the development application stage. A Voluntary Planning Agreement between the proponent and Council has also been finalised that requires a flood / stormwater assessment to the satisfaction of Council prior to lodgement of a development application.

In addition to flooding, community submissions in particular also raised concerns regarding potential downstream impacts and the conveyance of water through a path of legal discharge from the development.

The downstream path of discharge is via an existing culvert drain under the Old Pacific Highway. This water then flows through a cane channel to the north of the site. The owner of this land has advised he may cease maintenance of the cane drains in the future which could impact on the passage of water from the site.

The point of discharge from the land, being the culvert, is mapped as the location of a natural water course according to topographic maps. The topographic maps also indicate that the general location of the cane channel is a natural water course (that has been modified and improved) and therefore forms a legal point of discharge for the development. The capacity and ongoing maintenance of the downstream channel is a matter that can be adequately addressed at the

development application stage when a detailed stormwater design is prepared. As noted above, this could include measures such as on-site detention to help address and manage downstream issues. Council's approach to this matter is considered to be satisfactory.

- Impact on rural character / village amenity

Thirty two (32) submissions raised concerns relating to potential impacts of the proposal on the existing village / rural character of Mooball. The planning proposal provides for an expansion of the Mooball village to approximately six times its current size.

This land has been identified as a release area since 1992, with intensified development strategically supported following the construction of the Mooball Sewerage Treatment Plant. The existing village comprises average land holdings of approximately 700m². The advertised development included a variety of Minimum Lot Sizes (MLS) with the village expansion having a MLS of 450m². Following community consultation various minimum lot size proposals have been considered by Council to limit the impacts of this development on the existing character, however these were balanced against a need to accommodate predicted growth and the opportunity to create a residential mass which can support a more self sufficient village lifestyle.

Council's submissions review recommended the 450m² MLS be increased to 550m², Council staff recommended the 450m² MLS be increased to 700m². Both Councils submission review and staff agreed a portion of the 1ha MLS should be increased to 3ha. Council however resolved to retain the exhibited 450m² and 1ha minimum lot sizes.

It is noted that the proposed 450m² MLS is consistent with the MLS planning controls that apply to the existing village. The retention of the 1ha MLS is also supported as any future development application will have to demonstrate the suitability of the site including building envelopes and servicing. Having a smaller MLS will not necessarily result in a more intensive development settlement pattern. The smaller lot size would however help facilitate a range of allotment shapes and patterns which are better able to reflect the constraints of the land. The developer and Council have also entered into a voluntary planning agreement (VPA) which requires the development of design guidelines. These guidelines will cover housing types, materials, architectural and character features and landscaping elements that will help address rural character issues. Council's approach to this matter is considered to be satisfactory.

- Sewerage disposal

Twenty (20) submissions raised concerns relating to the provision of a potential second Sewerage Treatment Plant (STP) within the village of Mooball to serve the development and its proximity to existing residences. Council's submissions review found that no change to the proposal was necessary as the proposed STP was conceptual only and further studies into appropriate separation distances can occur as part of any future development proposal for the site, along with further community consultation. Council's approach to this matter is considered to be satisfactory.

- Land contamination

Twenty two (22) submissions raised concerns over the potential contamination of the land due to its historical usage as a banana plantation and potential for mineral sands. To date both a preliminary and detailed site investigation have been undertaken. The preliminary assessment has also been independently reviewed. These studies conclude that while there is some minor contamination on the land, it is not at a level that would preclude the rezoning and can be

adequately addressed the development application stage. Council's approach to this matter is considered to be satisfactory.

- Land Slip

Twenty (20) submissions raised concerns relating to the slope and stability of the land. The land is steep with parts sloping at greater than 25%. A preliminary Geotechnical and Slope Stability Assessment was submitted in support of the proposal which concluded that while there was some evidence of seepage and slumping, these areas could be stabilised and the site was suitable for residential development.

Council's submissions review, and Council staff, recommended that the minimum lot size for an area of land in the south eastern corner be increased from 1ha to 3ha. Council have however resolved to retain the exhibited the 1ha MLS. To support this approach, Council and the proponent have entered into a Voluntary Planning Agreement that requires a comprehensive geotechnical assessment to the satisfaction of Council be submitted prior to lodgement of a development application. Council's approach to this matter is considered to be satisfactory.

- Availability of services and employment in Mooball to serve the development.
A number of submissions raised concerns relating to the transport infrastructure and employment needed to serve the development. Mooball is a small village providing goods for daily shopping with reliance on transport to a larger centre for weekly shopping needs and employment. Public transport is limited to bus services operating to Murwillumbah with connections in Murwillumbah for Tweed Heads and other employment centres.

It is anticipated that the expanded residential area may provide a population mass sufficient to make existing commercial development more viable or potentially result in expansion to provide a small number more services. It is also anticipated that should reliance on public transport increase, the services have capacity to uptake that demand. Studies have also been undertaken showing the road network has capacity to accommodate predicted additional vehicle movements. Council's approach to this matter is considered to be satisfactory.

Proceed to Draft LEP :

Yes

If No, comment :

At the time of issuing the Gateway determination, the Secretary's delegate agreed to the inconsistencies of the proposal with S117 Directions 1.2, 3.1 and 4.3 were justified in accordance with the terms of the direction.

The inconsistency with S117 Direction 4.4 Planning for Bushfire Protection remained unresolved until consultation could take place with the NSW RFS. Council has consulted with the NSW Rural Fire Service (RFS) who have confirmed in writing that they raise no objection to the proposal. The Secretary's delegate can now agree that the proposal's minor inconsistency with S117 Direction 4.4 is justified in accordance with the terms of the direction.

It is noted that post exhibition changes were made to the proposal by Council to address some of the considerations raised. These changes included

- removing the proposed provisions to allow minimum lot size variations to clause 4.2A of the Tweed LEP 2014, and
- removing the proposed 2:1 floor space ratio for the RU5 Zone.

The Ministers delegate has previously agreed that the intent of these amendments were minor in nature and no further or different community consultation was required.

The Department has also received representations from certain residents of Mooball who were concerned that their comments to Council have not been adequately addressed. Staff from the Department's Northern Region met with community representatives on 19 September 2016 to discuss their concerns. The issues raised included:

- Flooding
- Land contamination
- Amenity of the Village
- Sewerage disposal
- Development outside the Town and Village Growth Boundaries, and demographic projection in the Far North Coast Regional Strategy not eventuating resulting in less demand for residential release areas
- Councillors voting against the Council staff recommendation to increase MLS
- Insufficient information to assess the impacts of the proposal
- Council not adequately considering submissions of the public nor OEH or RFS
- land use conflict for Lot B DP 419641 is located within the north eastern portion of the site. Lot B (700m²) is currently utilised for the breeding and keeping of poultry and the owners are concerned that development will result in a loss of rural amenity and ability to continue these breeding operations.

The majority of these matters have been discussed above and Council's approach to them is considered to be satisfactory.

In relation to the additional matters:

- Land Use Conflict for Lot B DP 419641

Council has addressed this matter by retaining a 50m RU2 buffer around the land and reinforcing this buffer through the voluntary planning agreement with the proponent. It also includes a requirement that a notation will be added to the land title that this allotment is used for agriculture and poultry pursuits. As the existing RU5 village zoning of Mooball is already approximately only 10m from this allotment, the proposed buffer is 50m and any future owners will be warned of the agricultural nature of this allotment, it is considered that the potential issues related to land use conflict have been appropriately addressed.

- Insufficient information to assess the impacts of the proposal

As discussed above in relation, the amount of information that has been provided in support of the planning proposal is considered sufficient to support the making of the LEP amendment, with further detail to be provided as part of the planning agreement process and the development application.

- Development outside the Town and Village Growth Boundaries, and demographic projection in the Far North Coast Regional Strategy not eventuating resulting in less demand for residential release areas,

While the land is outside the Town and Village Growth Boundary it is not within the Coastal Area and meets the sustainability criteria of the Far North Coast Regional Strategy. Its release to provide additional land supply for housing to support a growing population is considered to be appropriate.

- Council not adequately considering submissions of the public nor OEH or RFS

As discussed above, Council employed an external consultant to assess the public submissions received and make recommendations in response. OEH and RFS have not objected to the proposal. It is considered that Council's handling of the public and agency submission process is satisfactory.

Council was consulted on the draft LEP instrument pursuant to s.59(1) of the Act. On 9 November 2016 Council advised that the draft instrument was satisfactory subject to changes.

A PC opinion was issued on 14 November 2016. Council advised it was satisfied with this opinion on the 15 November. It is considered that the draft plan is suitable for making.

Proposed urban expansion to the Mooball village area

Have all necessary changes requested by Council / Department / Agency / Other been made?

No

If No, comment :

OEH requested consideration be given to an E3 zone along the southern boundary of the site and that Council give further consideration to flooding prior to the making of the LEP amendment

Application of E3 zone

Council has reviewed the land along the southern boundary of the site and has confirmed that it is unable to meet the criteria under the Far North Coast E Zone review. Council has elected to the existing RU2 zoning under the Tweed Local Environmental Plan 2014 to avoid any increased development pressure on the land. Council's approach to this matter is considered to be satisfactory.

Flooding

Refer to comments above regarding flooding.

LEP Determination

Date sent to legal : 13-Oct-2016

Total Days at PC : 10

Total Days at Legal/DoP : 46

PC Dates Details

Date sent to PC : 02-Nov-2016

Date returned from PC : 11-Nov-2016

Days at PC : 10

Other referrals :

Date Sent :

Date Received :

Elapsed Days : 79

Date PC provided an opinion that draft LEP could be made : 11-Nov-2016

Have changes been made to the draft LEP after obtaining final PC opinion? No

Determination Date :

Determination Decision :

Notification Date :

Decision made by :

Link to Legislation Website :

Internal Supporting notes :

Documents

Document File Name	DocumentType Name	Is Public
Planning Proposal Cover Letter.pdf	Proposal Covering Letter	Yes
Locality and Zoning Maps.pdf	Map	Yes
Planning Proposal - Mooball Residential Development.pdf	Proposal	Yes
Planning Team Report.pdf	Determination Document	Yes
1. Tweed Gateway.pdf	Determination Document	Yes
2. Tweed PR Report.pdf	Determination Document	Yes
2016-11-09 Gateway Extension.pdf	Determination Document	Yes
2016-09-28 Planning Proposal v3.pdf	Proposal	Yes
Mooball VPA.pdf	Study	Yes