

Tweed LEP 2014 – Rezoning of 16A Anconia Avenue, Tweed Heads West.

Proposal Title : **Tweed LEP 2014 – Rezoning of 16A Anconia Avenue, Tweed Heads West.**

Proposal Summary : **The planning proposal seeks to amend Tweed LEP 2014 to correct an error in the zoning of Lot 1 DP 1126205, 16A Anconia Avenue, Tweed Heads West. The subject land is privately owned, contains an existing dwelling and is used for residential purposes. It has been incorrectly zoned E1 National Parks and Nature Reserves. The proposed amendment will rezone the land R2 Low Density Residential and also correct the Height of Buildings Map, Floor Space Ratio Map and Lot Size Map for the subject land.**

PP Number : **PP_2015_TWEED_002_00** Dop File No : **15/06169**

Proposal Details

Date Planning Proposal Received : **13-Apr-2015** 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 : **16A Anconia Avenue**

Suburb : **Tweed Heads West** City : Postcode : **2484**

Land Parcel : **Lot 1 DP 1126205**

DoP Planning Officer Contact Details

Contact Name : **Paul Garnett**

Contact Number : **0266416607**

Contact Email : **paul.garnett@planning.nsw.gov.au**

RPA Contact Details

Contact Name : **Matthew Zenkteler**

Contact Number : **0266702585**

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

DoP Project Manager Contact Details

Contact Name : **Jim Clark**

Contact Number : **0266416604**

Contact Email : **jim.clark@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
MDP Number :		Date of Release :	
Area of Release (Ha) :	0.15	Type of Release (eg Residential / Employment land) :	Residential
No. of Lots :	0	No. of Dwellings (where relevant) :	1
Gross Floor Area :	0	No of Jobs Created :	0

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

If No, comment :

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

If Yes, comment :

Supporting notes

Internal Supporting Notes :

External Supporting Notes :

Adequacy Assessment

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

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

Comment : **The Statement of objectives adequately describes the intention of the planning proposal. The proposal seeks to amend the Tweed LEP 2014 to correct errors on the maps for the zone, building height, lot size and floor space ratio (FSR) for the subject site.**

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

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

Comment : **The explanation of provisions adequately addresses the intended method of achieving the objectives of the planning proposal. The proposal seeks to amend the LEP by:**

- 1. Amending the Land Zoning Map to change the zone from E1 National Parks and Nature Reserves to R2 Low Density Residential;**
- 2. Amending the Height of Buildings Map to apply a 9m maximum building height to the land consistent with other R2 zoned land in the LGA;**
- 3. Amending the Floor Space Ratio Map to apply a 0.8:1 FSR to the land consistent with other R2 zoned land in the LGA;**
- 4. Amending the Lot Size Map to apply a 450m2 minimum lot size to the land consistent with other R2 zoned land in the LGA.**

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **Yes**

b) S.117 directions identified by RPA :

* May need the Director General's agreement

1.5 Rural Lands

2.1 Environment Protection Zones

2.2 Coastal Protection

2.3 Heritage Conservation

3.1 Residential Zones

3.3 Home Occupations

3.4 Integrating Land Use and Transport

3.5 Development Near Licensed Aerodromes

4.1 Acid Sulfate Soils

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 14—Coastal Wetlands

SEPP No 44—Koala Habitat Protection

SEPP No 71—Coastal Protection

SEPP (Building Sustainability Index: BASIX) 2004

SEPP (Exempt and Complying Development Codes) 2008

SEPP (Infrastructure) 2007

SEPP (Affordable Rental Housing) 2009

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

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

If No, explain :

See the assessment section of his report.

Mapping Provided - s55(2)(e)

Is mapping provided? **Yes**

If No, comment :

The planning proposal contains maps which adequately show the site and the proposed changes. The current and proposed Land Zoning Map, Lot Size Map, Height of Buildings Map and Floor Space Ratio Map are included in the planning proposal.

Maps which comply with the Standard Technical Requirements for Maps will be required when legal drafting of the draft LEP is requested.

Community consultation - s55(2)(e)

Has community consultation been proposed? **No**

Comment :

The planning proposal identifies the proposal as a low impact planning proposal and requests that no community consultation be required. The proposal seeks to correct an error in the LEP mapping for the subject land. The land is incorrectly zoned as E1 National Parks and Nature Reserves however is privately owned and developed for low density residential purposes. The land owner is seeking to sell the property and correction of the mapping error should be undertaken as soon as possible.

It is considered appropriate that no community consultation be required for the proposal.

Additional Director General's requirements

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

If Yes, reasons :

Overall adequacy of the proposal

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

If No, comment :

Time Line

The planning proposal includes a project timeline which estimates the completion of the planning proposal in July 2015. Given no community consultation is considered necessary, a 6 month time frame is considered to be appropriate.

Delegation.

Tweed Council has not accepted delegation for making LEPs. Council has advised it is not seeking an Authorisation to exercise delegation for this proposal. An Evaluation Criteria For the Delegation of Plan Making Functions has not been provided. It is recommended that an Authorisation for the execution of delegation not be issued to Tweed Council in this instance.

Overall Adequacy

The planning proposal satisfies the adequacy criteria by;

1. Providing appropriate objectives and intended outcomes.
2. Providing a suitable explanation of the provisions proposed for the LEP to achieve the outcomes.
3. Providing an adequate justification for the proposal.
4. Outlining a proposed community consultation program.
5. Providing a project time line
6. Advising Council is not seeking delegation of plan making functions.

Proposal Assessment

Principal LEP:

Due Date :

Comments in
relation to Principal
LEP :

The Tweed LEP 2014 commenced in April 2014. This planning proposal seeks an amendment to the Tweed LEP 2014.

Assessment Criteria

Need for planning
proposal :

The proposal is not a result of a strategic study or report. The proposal seeks to correct an error in the LEP mapping for the site which occurred during preparation of the Tweed LEP 2014. The subject land is located in an established residential area and contains a single dwelling. The land was previously zoned part 1(a) Rural and Part 2(a) Low Density Residential under the Tweed LEP 2000. The land adjoin the site, immediately to the west, was acquired as part of the habitat compensation package for the Tugun bypass and was recently included in the Cobaki Nature Reserve. It is suspected that the E1 National Parks and Nature Reserves zoning applied to this land was inadvertently applied to the subject site, resulting in the mapping error.

The error was noticed when the land owner commenced arrangements to sell the property. The E1 zone is excessively restrictive and not suitable for private land which is used for residential purposes.

The proposal to rezone the site to R2 Low Density Residential is the best means of rectifying the error and achieving the intent of the proposal. The LEP amendment will also change the Lot Size Map, Height of Buildings Map, and Floor Space Ratio Map to apply appropriate planning controls consistent with other R2 zoned land in the Tweed local

Consistency with strategic planning framework :

government area.

Far North Coast Regional Strategy (FNCRS).

The proposal is not inconsistent with the FNCRS. Part of the subject land is outside of the town and village growth area boundary for Tweed Heads West. This area of land was previously zoned 1(a) Rural. However this land is currently used in conjunction with the dwelling on the site for residential purposes and a R2 zone is appropriate. The zoning of the land R2 will not require additional infrastructure and will not have an adverse impact on the natural environment. The land is not subject to significant constraints and is already development for residential purposes. The FNCRS enables minor variations to the growth area boundary and it is considered that in this instance the variation is of minor significance and is appropriate.

Consistency with Council's Local Strategies.

The proposal is consistent with the Council's Community Strategic Plan 2013/2023.

SEPPs

The proposal is not inconsistent with any State environmental planning policies (SEPPs). The proposal has indicated that SEPP 14, SEPP 44, SEPP 71, SEPP (Affordable Rental Housing) 2009, SEPP (Building Sustainability Index: BASIX) 2004; SEPP (Exempt and Complying Development Codes) 2008; SEPP (Infrastructure) 2007 are applicable to the proposal however the proposal is not inconsistent with these SEPPs.

S117 Directions.

The following S117 directions are applicable to the proposal, 1.5 Rural Lands, 2.1 Environment Protection Zones, 2.2 Coastal Protection, 2.3 Heritage Conservation, 2.4 Recreational Vehicle Areas, 3.1 Residential Zones, 3.2 Caravan Parks and Manufactured Home Estates, 3.3 Home Occupations, 3.4 Integrating Land Use and Transport, 3.5 Development Near Licensed Aerodromes, 4.1 Acid Sulfate Soils, 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, and 6.3 Site Specific Provisions.

Of the above s117 Directions the proposal is considered to be inconsistent with Directions 2.1, 3.5, 4.1 and 4.4.

Direction 2.1 Environment Protection Zones is relevant to the proposal. The direction provides that a planning proposal shall not reduce environmental protection standards that apply to land. The proposal seeks to rezone the land from E1 National Parks and Nature Reserves to R2 Low Density Residential. The land is privately owned and developed with a dwelling for residential purposes. The area of the land is only 1457 square metres. The E1 zone has been applied incorrectly. The direction provides that the proposal may be inconsistent with the terms of the direction if the inconsistency is of minor significance. It is considered that in this instance the inconsistency is of minor significance and has been justified in accordance with the terms of the direction.

Direction 3.5 Development Near Licensed Aerodromes is relevant to the proposal. The direction provides that a planning proposal shall not rezone land for residential purposes in areas where the ANEF is between 20 and 25 without including provisions relating to interior noise levels. The land to be rezoned from E1 to R2 is within the ANEF 20-25 contour.

The direction provides that a planning proposal may be inconsistent with the direction if the inconsistency is of minor significance. The subject land already contains a dwelling and is located within an established residential area. The land was previously zoned for residential purposes in the Tweed LEP 2000 and the E1 zone has been applied in error. Provisions relating to development in ANEF contours of 20 or more are already contained in the Tweed LEP 2014. It is considered that the inconsistency is of minor significance and therefore the inconsistency of the proposal with the direction has been justified in accordance with the terms of the direction.

Direction 4.1 Acid Sulfate Soils is applicable to the proposal. The direction states that a planning proposal should not propose an intensification of land uses on land having a

probability of containing acid sulfate soils unless a study of the appropriateness of the land has been undertaken.

The proposal seeks to rezone the subject land from E1 to R2. The subject land is classified as Class 5 acid sulfate soils. The subject land already contains a dwelling and is located within an established residential area. The land was previously zoned for residential purposes in the Tweed LEP 2000 and the E1 zone has been applied in error. Therefore the inconsistency of the proposal with the direction is considered to be of minor significance, and is justified in accordance with the terms of the direction.

Direction 4.4 Planning for Bushfire Protection is relevant to the proposal. Part of the subject land is bush fire prone. The Direction requires the RPA to consult with the Commissioner of the NSW Rural Fire Service after a gateway determination has been issued and prior to public exhibition. Until this consultation has occurred the consistency of the proposal with the direction remains unresolved.

The proposal is otherwise consistent with S117 Directions.

Environmental social
economic impacts :

The subject land is located in an urban area and is already developed for residential purposes. There is no likelihood that the proposal will adversely affect critical habitat or threatened species, populations or ecological communities or their habitats. The E1 zoning has been incorrectly applied and the land does not contain any vegetation that warrants an E1 zone.

The changes to the planning controls for the site are not expected to result in other adverse environmental impacts. The proposal is not likely to have negative social impacts as the land is already developed for low density residential purposes and further development of the land is not expected.

Assessment Process

Proposal type :	Routine	Community Consultation Period :	Nil
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Timeframe to make LEP :	6 months	Delegation :	DDG
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Public Authority Consultation - 56(2)(d) :	NSW Rural Fire Service
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Is Public Hearing by the PAC required?	No
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(2)(a) Should the matter proceed ?	Yes
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If no, provide reasons :

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

If Yes, provide reasons :

Identify any additional studies, if required :

If Other, provide reasons :

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 :

Planning Team Recommendation

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

S.117 directions :

- 1.5 Rural Lands
- 2.1 Environment Protection Zones
- 2.2 Coastal Protection
- 2.3 Heritage Conservation
- 3.1 Residential Zones
- 3.3 Home Occupations
- 3.4 Integrating Land Use and Transport
- 3.5 Development Near Licensed Aerodromes
- 4.1 Acid Sulfate Soils
- 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

Additional Information :

It is recommended that;

1. The planning proposal should proceed as a 'routine' planning proposal.
2. No community consultation period is necessary.
3. The planning proposal is to be completed within 6 months.
4. A written authorisation to exercise delegation is not to be issued to Tweed Council in this instance.
5. A delegate of the Secretary agree that the inconsistencies of the proposal with S117 Directions 2.1, 3.5, and 4.1 are justified in accordance with the terms of the directions.
6. Council consult with the Commissioner of the NSW Rural Fire Services in accordance with S117 Direction 4.4 Planning for Bush Fire Protection.

Supporting Reasons :

The reasons for the recommendation are as follows;

1. The proposed LEP amendment will correct an error in the zoning applied to private land which has already been development for residential purposes.
2. The proposal is consistent with the Far North Coast Regional Strategy and the RPAs Local Strategy and the inconsistency with S117 Directions is of minor significance.

Panel Recommendation

Recommendation Date :	Gateway Recommendation :	Passed with Conditions
Panel Recommendation :	This planning proposal is considered of local significance and the Gateway Determination is to be issued under delegation by the General Manager, Northern Region. Therefore the planning proposal will not be considered by the panel.	

Gateway Determination

Decision Date :	15-Apr-2015	Gateway Determination :	Passed with Conditions
Decision made by :	General Manager, Northern Region		

Gateway Determination : **The planning proposal should proceed subject to the following conditions:**

1. No community consultation is required under sections 56(2)(c) and 57 of the EP&A Act.
2. Consultation is required with the Commissioner of the NSW Rural Fire Service under section 56(2)(d) of the EP&A Act in relation to S117 Direction 4.4 Planning for Bush Fire Protection. The NSW Rural Fire Services 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.
3. 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).
4. The timeframe for completing the LEP is to be 6 months from the week following the

date of the Gateway determination.Exhibition period : **Nil**Gateway Timeframe : **6 months**Extension Timeframe : **0 months**Total Timeframe : **6 months**Proposal Due Date for Finalisation: **22-Oct-2015**Status: **On-time**

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

ImplementationGateway effective date : **22-Apr-2015**

Exhibition start date :

Exhibition end date :

Exhibition duration :

Public hearing :

Date :

Date advice received
from RPA : **14-May-2015**Days with RPA : **23****LEP Assessment**Days with DoP : **6**Number of submissions : **0**Additional studies conducted : **No**Agency consultation consistent
with recommendation : **Yes**

If No, comment : **The Gateway determination required consultation with the NSW Rural Fire Service (RFS). Council wrote to the RFS and received confirmation of receipt of its request for comment. The RFS raised no objection to the proposal within the 21 day timeframe provided for consultation by the Gateway determination.**

Agency Objections : **No**

If Yes, comment : **The Gateway determination did not require any community consultation. The proposal corrects a mapping error in the zoning of Lot 1 DP 1126205. The land is privately owned, contains an existing dwelling house and is used for residential purposes. The land has incorrectly been zoned E1 National Parks and Nature Reserves. Community consultation was not considered to be necessary to correct this minor error.**

Documentation consistent
with Gateway : **Yes**

If No, comment : **A Gateway determination was issued for this planning proposal on 15 April 2015. The Gateway determined that the proposal should proceed subject to conditions.**

The Council has fulfilled the requirements of the Gateway in progressing this planning proposal.

Council was consulted on the draft LEP pursuant to s.59(1) of the Act. On 25 June 2015 Council advised that the draft instrument was satisfactory.

A PC opinion was issued on 30 June 2015. It is considered that the draft plan is suitable for publication.

Far North Coast Regional Strategy (FNCRS)

The proposal is not inconsistent with the FNCRS. As previously discussed in this report part of the subject land is outside of the town and village growth area boundary for Tweed Heads West. However this land is currently used in conjunction with the dwelling on the site for residential purposes and a R2 zone is appropriate. The FNCRS enables minor variations to the growth area boundary and it is considered that in this instance the variation is of minor significance and is appropriate.

SEPPs.

The proposal is not inconsistent with any State environmental planning policies.

S117 Directions.

On 15 April 2015 a delegate of the Secretary agreed that the inconsistencies with section 117 directions 2.1 Environment Protection Zones, 3.5 Development Near Licenced Aerodromes and 4.1 Acid Sulfate Soils, were justified in accordance with the terms of the directions.

Direction 4.4 Planning for Bushfire Protection

The land contains bush fire prone land therefore the proposal was also inconsistent with section 117 direction 4.4 Planning for Bushfire Protection. The inconsistency could not be justified until the RPA had consulted with the Commissioner of the NSW Rural Fire Service (RFS). The RPA conducted such consultation and the RFS did not object to the proposal. It is therefore considered that the inconsistency is justified in accordance with the terms of the direction.

The proposal is otherwise consistent with S117 Directions.

Proceed to Draft LEP :

Yes

If No, comment :

It is recommended that the Minister's delegate make the LEP under section 59(2) (a) of the Act as submitted by the Council as the relevant planning authority.

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

Yes

If No, comment :

No changes to the LEP are considered to be necessary.

LEP Determination

Date sent to legal : **19-May-2015**

Total Days at PC : **27**

Total Days at Legal/DoP : **17**

PC Dates Details

Date sent to PC : **04-Jun-2015**

Date returned from PC : **30-Jun-2015**

Days at PC : **27**

Other referrals :

Date Sent :

Date Received :

Elapsed Days : **50**

Date PC provided an opinion that draft LEP could be made : **30-Jun-2015**

Tweed LEP 2014 – Rezoning of 16A Anconia Avenue, Tweed Heads West.

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 for rezoning 16A Anconia Ave Tweed Heads West.pdf	Proposal	Yes
2015-04-15 Planning Team Report PP_2015_TWEED_002_00.pdf	Determination Document	Yes
2015-04-15 Gateway Determination for PP_2015_TWEED_002_00.pdf	Determination Document	Yes
2015-04-13 Council cover letter for PP_2015_TWEED_002_00.pdf	Proposal Covering Letter	Yes
Gateway determination report for PP_2015_TWEED_002_00.pdf	Determination Document	Yes