

Purpose: To provide a recommendation to the Director General stating whether the proposed instrument should progress to pre-Gateway review by the Joint Regional Planning Panel (JRPP) / Planning Assessment Commission (PAC) by:

- undertaking an assessment of the proposed instrument to determine whether it has strategic merit and/or site-specific merit
- considering any views of the council and justification of the proponent in relation to the proposed instrument.

Dept. Ref. No:	PGR_2013_TWEED_013_00	
LGA:	Tweed	
LEP to be Amended:	Tweed LEP 2000 or Draft Tweed LEP 2012	
Address/ Location:	420-434 Terranora Road, Terranora	
Proposed Instrument:	Spot rezoning. To rezone seven (7) allotments from 1(b1) Agricultural Protection to 2(a) Low Density Residential under Tweed LEP 2000 (Tag E); or To rezone seven (7) allotments from RU1 Primary Production to R2 Low Density Residential under Tweed LEP (If made before this proposal is finalised) (Tag F).	
Reason for Review:	☒ Council notified proponent it will not support the proposed instrument.	☐ Council failed to indicate support within 90 days

Supporting information

Additional supporting material List additional information provided at time of initial request to council including date material prepared	The information provided to the Department on 26 April 2013 is listed below under 'Material Provided in Support of Application/Proposal'. No additional detail was requested by the Department nor was any additional material submitted by the proponent post 26 April 2013. It is noted that 'The Aboriginal Heritage Due Dilligence Assessment (Dated 4 July, 2012)' was submitted to the Department on 26 April 2013, however Council note that this assessment did not form part of the original rezoning submission package that was submitted to Council in May 2012. An assessment of this report has been undertaken as part of this merit assessment.
Correspondence Submitted List (chronologically) correspondence including date, purpose and outcome/agreement, and including any correspondence with agencies/stakeholders etc	- 26 September 2007 - Correspondence from Tweed Council to the land owner confirming that the subject allotments do not have a dwelling entitlement. - 5 October 2010 - 6 October 2010 - Email trail between Council and land owner regarding no dwelling entitlements and suggesting the required rezoning to achieve a dwelling entitlement for the site. - 21 November 2012 - 20 February 2013 - Email trail between Council and the Planning Consultant regarding the progression of the Planning Proposal request. - 26 March 2013 - Correspondence from Tweed Council to the Planning Consultant outlining that Council does not support the preparation of a Planning Proposal.

Views of council

Date council advised of request:	01/05/2013
Date of council response:	20/05/2013
Council response: List issues / points provided in response	Council has referred to the 21 March 2013 Business Paper which outlines the main issues in relation to the proposed rezoning. These issues are summarised below and have been discussed in more detail as part of this merit assessment (Tag G). - Concern that the site is not currently connected to any sewerage, trunk drainage or potable water service and that provision of these services may be limited due to capacity issues in the existing services surrounding the site. - Stormwater management for the site has the potential to impact on inter allotment drainage to the adjoining future residential land, and as currently proposed, is inconsistent with Council's drainage strategies. - The proposed access arrangements for the site have the potential to impact stormwater management across the site and to create an unattractive design outcome, limiting building envelopes and requiring significant earthworks and retaining wall structures. - Important views to and from the site need to be protected through appropriate building design onsite. - Any works undertaken within Council's road reserve would need to be maintained by the residents, such as landscaping of batters, driveways, etc. - A Phase 1 Contamination Assessment under SEPP 55 is required to determine the suitability of the site in regard to contamination. - An Aboriginal Cultural Heritage Due Diligence Assessment is required to be prepared.

Proponent justification

Details of justification:	A pre-gateway review has been requested as Tweed Shire Council advised the proponent on 26 March 2013 that the subject rezoning request was not supported. The proponent outlines that a pre-gateway review is warranted as "Councils position of non-support will maintain a zoning oddity within the Tweed LEP which prevents seven (7) allotments from being used for residential purposes - Council's position of non support is prohibiting attainment of the objectives of the EP&A Act 1979" The proponent advises: - Each of the seven (7) lots are below 900m2 in area - The total combined area of these lots is 6,020m2 - The current land zoning and minimum lot size prohibits the erection of a dwelling on each lot - Council has confirmed that the allotments do not have a dwelling entitlement - A future residential release area adjoins the east, north and western boundaries of the site - The land to the south is developed as a large lot residential development - Rezoning of the site will allow development of the site consistent with the future adjoining development - If the land is not rezoned for residential use, the current zoning is prohibiting the orderly and economic development of the land and therefore inconsistent with the EP&A Act 1979.
Material provided in support of application/proposal:	The pre-gateway package submitted to the Department on 22 April 2013 (Tag C) included: - Pre-gateway review cover letter - dated 22 April 2013 - Completed pre-gateway review application form - dated 23 April 2013 - Rezoning submission package including: - Cover letter to Council - dated 28 May 2012 - Owners Consent - dated 25 May 2012 - Tweed Council request to prepare a planning proposal application form - dated 10 July 2012 - Tweed Council planning proposal checklist - not dated - Tweed Council planning proposal report cover sheet - dated 10 July 2012 - Planning proposal submission - dated May 2012 - Appendix A - Civil Engineering Assessment - dated 15 May 2012 - Appendix B - Site Analysis & Site Constraints - not dated - Appendix C - Site Sections - not dated - Appendix D - Existing / Proposed Zoning Tweed LEP 2000 Maps - not dated - Appendix E - Existing / Proposed Zoning Draft Tweed LEP 2010 Maps - not dated - Appendix F - Site photos - dated May 2012 - Appendix G - Landscaping Concept - dated May 2012 - Appendix H - Aboriginal Heritage Due Dilligence Assessment - dated 4 July 2012 - Council Correspondence (discussed below)

Strategic and site specific assessment

STRATEGIC MERIT ASSESSMENT	
Relevant regional strategy Include details about strategy i.e. currency, being reviewed etc	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 planning directions in the Strategy are currently being re-evaluated as part of the Strategy's five yearly review. Proponent Comment: - The site is not strictly consistent with the provision of the FNCRS because it relates to urban land release. - The site is located within the Coastal Zone and outside the Town and Village Growth Boundary (TVGB). - Section 117 Direction 5.1 provides for minor inconsistencies where it is considered to not undermine the Strategy's vision, land use strategy, policies, outcomes or actions (Discussed further below). - The site is surrounded by land zoned for urban and rural residential purposes which has resulted in a small, fragmented agricultural zoned pocket of land which cannot be reasonably, economically or productively used for agricultural purposes. - The current zoning of the land precludes the development of the site for residential uses due to existing allotment size restrictions and lack of dwelling entitlement. - The site is therefore subject to a zoning anomaly which prevents development. - Correction of this anomaly is of minor significance and not inconsistent with the overall intent of the FNCRS. DP&I Comment: A primary objective of the FNCRS is to contain future urban development within the TVGB. This growth boundary identifies the land required to meet the Region's urban housing and employment needs until 2031. The FNCRS provides however that a minor rounding off of the TVGB may be considered if it can be demonstrated to be warranted. The urban release area which adjoins the site under the FNCRS, known as Area E, is subject to a current Part 3A proposal which seeks the residential development of the land to create approximately 320 residential allotments. Furthermore, a DCP to guide residential development across Area E has been prepared and adopted by Council but is not yet in effect. Residential development to the east, north and west of the site is therefore imminent. The land to the south has been developed for rural residential purposes. The surrounding land uses create an alienated 6,020m² parcel of agricultural zoned land. Given the surrounding land uses preclude the land from being used for agricultural purposes and that the site does not have any ecological value (see below), rezoning the land for residential use to allow development of the site would not be inconsistent with the vision, land use strategy, policies, outcomes or actions of the FNCRS. This proposal is considered to be a minor rounding off of the TVGB and could be included as part of the forthcoming review of the Strategy. NORTHERN RIVERS FARMLAND PROJECT (NRFP) The Farmland Protection Project seeks to protect important farmland from urban and rural residential development by mapping farmland and developing planning principles. The current 2005 mapping is to be reviewed as part of any review of the FNCRS. The land is identified as State Significant Farmland. The NRFP

	provides that State Significant Farmland cannot be considered for urban or rural residential rezoning unless in an agreed land release strategy. Proponent Comment: - The proposal is inconsistent in that it will rezone land mapped as State Significant Farmland for urban purposes. - Section 117 Direction 5.3 states that a planning proposal may be inconsistent where it can be demonstrated that the proposal is consistent with the FNCRS and the final recommendations of the NRFP. - The agricultural value of the land is marginal and given the surrounding land uses retention of the land as an important farmland resource is unsustainable and inconsistent with the principles of land use conflict. DP&I Comment: As discussed above, the proposal is consistent with the FNCRS as it forms a minor rounding off of the TVGB. As such the proposal is considered to be consistent with the NRFP. The proposed and existing residential development surrounding the site will preclude use of the land for agricultural purposes. In this regard the land (6020m²) has little or no agricultural significance. The Farmland Mapping therefore does not reflect the ability of the land to be used for agricultural purposes.
Relevant local strategy Include relevant details e.g. date adopted, date endorsed etc	TWEED 4/24 STRATEGIC PLAN 2004 Tweed 4/24 sets Council's broad governance directions for the next two decades Proponent Comment: The proposal is considered not to compromise the envisaged outcomes of Tweed 4/24 and therefore is considered to be consistent with Council's strategic document. DP&I Comment: A key direction under the Tweed Strategic Plan is the provision of housing that will contribute to housing diversity, lifestyle choice and affordability within the Shire. Use of the site for residential purposes would generally be compatible with the surrounding land uses. Furthermore, the proposal will facilitate an increase in housing choice, albeit it minor, within the locality while having minimal impact on the environment. The proposal is considered to be generally consistent with the principles of the Strategy. TWEED URBAN AND EMPLOYMENT LAND RELEASE STRATEGY 2009 The Tweed Urban and Employment Land Release Strategy 2009 outlines an urban land release program for the Shire until 2031, with a focus on existing zoned and some greenfield development over the life of the Strategy. The Strategy is to be reviewed every five years. It was adopted by Council on 17 March 2009. This strategy has not been endorsed by the Director General. The strategy does not identify this land for future urban release. Proponent Comment: - The land directly adjoins an urban release area identified within Figure 19 of the Strategy which has now been zoned for residential purposes. - The land to the south has been developed for rural residential purposes.

	- The planning proposal will correct this anomalous zoning which is deemed consistent with the provisions of the Strategic Plan. DP&I Comment: As discussed above, residential use of the site would be compatible and consistent with the adjoining land uses. The proposal is generally consistent with the principles of the Strategy.
Relevant s117 Directions considered to support strategic merit	The following s117 Directions directly support strategic merit of the proposal. 1.5 Rural Lands Although the land is mapped significant farmland, the size (6020m²) of the lot and surrounding land uses preclude the use for agricultural purposes. Use of the site for residential purposes would not impact any current or potential future productive and sustainable economic activities on the land. The proposal is therefore consistent with the principles of SEPP (Rural Lands) 2008. 2.1 Environmental Protection Zones The proposal would not impact on any environmentally sensitive land. 3.1 Residential Zones The proposal will facilitate an increase in housing choice within the locality while having minimal impact on the environment. 4.4 Planning for Bushfire Protection The site is not affected by any bushfire constraint. The proposal's consistency with the following s117 Directions also support strategic merit: 1.3 Mining Petroleum and Extractive Industries 2.2 Coastal Protection 2.3 Heritage Conservation 6.1 Approval and Referral Requirements
Additional supporting information provided	SEPP (NORTH COAST REGIONAL ENVIRONMENTAL PLAN) 1988 The North Coast Regional Environmental Plan (REP) aims to set guiding policies to protect the Region's natural assets and guide appropriate development. Proponent Comments: Clause 7 Prime Crop and Pasture Land - despite the land being zoned for agricultural purposes the site cannot be considered prime crop or pasture land given its characteristics. Clause 38 Urban Land Release Strategy - the proposal would not result in significant growth and therefore this clause is not relevant to the proposal. Clause 42 Principles for Housing - the site has access to existing services with adequate design capacity (see comments below). DP&I Comment The issues regarding agriculture and housing are discussed above and the proposal is considered consistent with the REP. The issue of infrastructure for housing is discussed below under 'Site Specific Merit Assessment' regarding servicing arrangements for the site.
Assessment Provide assessment of information provided	As outlined above, the proposal is not directly consistent with the current mapping under the FNCRS and local growth strategies. The information provided with the proposal however demonstrates that the proposal does have strategic merit as it is consistent with the overarching principles of these strategies: - The FNCRS provides that an adjustment to the TVGB can be undertaken where it is determined to be minor and warranted. This site is considered to

	satisfy this requirement. - The land adjoins residential zoned land to the east, north and west of the site and rural residential to the south. - The site is relatively small, comprising 6,020m², and therefore would not constitute a large urban release. - The size of the site and surrounding land uses preclude the land being used for agricultural purposes and therefore has no agricultural value. - Development of the site will have minimal impact on natural resources (see below). - The proposal is consistent with most Section 117 Directions and where inconsistency is noted, it is considered to be minor and justified. - Many of the arguments presented by Council are not strategic in nature and can be addressed either after Gateway determination or at development stage. See analysis under "Site Specific Merit Assessment".
Recommendation:	The proposal is considered to have strategic merit considering the strategic planning directions relevant to the site

SITE-SPECIFIC MERIT ASSESSMENT	
Natural environment	The characteristics of the site as identified in the pre-gateway submission are: - The land is generally cleared of any significant vegetation. - The site primarily consists of grasslands and therefore has no significant ecological value. - Some mature vegetation occurs along the northern and western property boundaries. These are predominantly weed species. - The land is undulating, and generally slopes south to north. - Some portions of the land are quite steep, with gradients greater than 20%. - A 300mm stormwater culvert located under Terranora Road currently discharges onto the site. This has created a scoured drainage line which traverses the centre of the site. A inspection of the site was undertaken on the 11 May 2013 which has confirmed the above.
Existing, approved, likely future use of land	A review of the pre-gateway submission has confirmed the following: - The site comprises seven (7) allotments, each with a lot area less than 900m² and a combined area of 6,020m². - The site has frontage to Terranora Road, which has a sign posted speed of 60km/h. - Residential dwellings adjoin the western and eastern boundaries of the site. These lots are a similar size and configuration to the seven (7) subject allotments. - Council have confirmed that the seven (7) allotments do not have a dwelling entitlement. - The land is located within an established residential area approximately 1.8km east of Terranora Village. - The land to the east, north and west has been zoned for residential purposes. - The land to the south of the site has been developed for rural residential purposes. - The land will remain vacant should it not be rezoned for residential purposes. - Should the land be rezoned as proposed, the site could be utilised for low density residential purposes. - The proposal suggests that the seven (7) allotments would not be further subdivided and therefore a maximum of seven (7) dwellings would be constructed. - A concept plan has been provided which indicates the creation of a shared access driveway which would provide access to all seven (7) allotments from one single point of entry/exit to Terranora Road. - Significant land forming works and retaining wall construction would be required to create level building pads and appropriate driveway grades. - The construction of this driveway would limit the size and location of building envelopes on each allotment.

Services and Infrastructure	SEWERAGE No reticulated sewerage or trunk drainage service is currently available to the site. The proponent has provided indicative options for connecting the site to existing sewerage services, including an interim pressure connection to the rural residential estate in the south and ultimate gravity fed connection to the future residential release area to the north. Council has confirmed that the land can be connected to sewer however raises concerns regarding existing sewerage capacities and question the practicality of the proposed interim and ultimate arrangements. POTABLE WATER A water main exists along the southern boundary of the site within the Terranora Road reserve. The proponent has suggested that each allotment could be connected to this water main. Council has confirmed that potable water can be provided to the site however raise concern regarding the additional loadings on the current water supply. STORMWATER A Civil Engineering Assessment has been provided as part of the submission which states adequate stormwater management infrastructure can be provided onsite. A concept drainage plan has been provided which indicate upgrades to the existing culvert under Terranora Road and diverting flow below ground under the proposed driveway. Council has confirmed that stormwater can be managed however raise concern that the proposed drainage scheme is inconsistent with Council's adopted drainage specifications. TRAFFIC AND ACCESS Due to the topography of the land and to minimise access points along Terranora Road, a shared driveway with a single point of access has been proposed and is indicated in Concept Plans. The engineering assessment states that the proposed driveway access is consistent with Council's road design and driveway access specifications. Council has confirmed that access to the site can be achieved however has indicated that the concept access arrangement is not supported due to potential usability implications and impact on current stormwater arrangements. It is considered that these issues could be resolved and would not preclude the rezoning process commencing.
Other relevant matters	CONTAMINATION The proponent has advised that the site historically was used for grazing prior to 1958. The land was subdivided into its current arrangement in 1958 and has since remained vacant. Council has requested that a contamination assessment be undertaken prior to progressing the rezoning request. A review of the contamination assessment undertaken for Area E by Gilbert & Sutherland, dated October 2003 has confirmed that contamination levels surrounding the site were below the relevant health investigation levels adopted by NSW EPA. Accordingly, it would appear that contamination is not a key consideration for the site and could be investigated as part of the rezoning

	process or post rezoning. VISUAL ASSESSMENT Terranora Road is predominantly a residential street, with a posted speed of 60km/h and residential development aligning both sides of this roadway. Furthermore, the roadway does not incorporate rest areas or any formalised vantage points within proximity to the site to provide viewing opportunities. Development of the site for residential purposes is therefore consistent with the character of this roadway. Council has confirmed that key view lines across the site can be maintained through appropriate building design and layout. However, Council seeks to ensure that this matter be addressed prior to rezoning the site. Further visual impact and urban design assessment should be undertaken to determine appropriate finished levels, building and retaining wall heights for the site. This assessment should demonstrate consistency with Council's Scenic Evaluation Study. It is considered however that this visual assessment should not preclude rezoning consideration. HERITAGE REVIEW An Aboriginal Heritage Due Dilligence and European Cultural Assessment has been provided as part of the pre-gateway submission package. This Heritage Assessment did not form part of the original rezoning request made to Council. The Assessment confirms that no historical evidence or items of historical significance have been identified onsite and identifies strategies for the management of any unexpected aboriginal archaeological resources discovered during any future works onsite. Heritage significance is therefore not a key consideration for the site.
Assessment Provide assessment of information provided	The pre-gateway submission clearly provides justification for the proposed rezoning of the land. An assessment of the site indicates that there are not significant constraints that would preclude further investigations for the rezoning of the land. The issue raised by Council in terms of infrastructure, visual assessment and contamination can be addressed where appropriate during the rezoning process or the development stage if the land is rezoned.
Recommendation	The proposal has site specific merit.

Assessment summary

Department's assessment Provide a summary assessment of the department's position/views on the proposal	The department considers that the proposal has both strategic and site specific merit given the following: - Adequate information is provided to justify the strategic merit of the proposal. - The proposal is generally consistent with the relevant regional and local strategies and policies applying to the land. - The land has no agricultural or ecological value. - The proposal represents logical infill development, consistent with the adjoining land uses. The issues raised by Council regarding servicing is a matter that can, where appropriate, be addressed through the rezoning process. Furthermore the matters regarding access, stormwater management, visual impact and contamination could be reviewed further as part of the post gateway requirements or as a matter for review at DA stage.
--	---

RECOMMENDATIONS

☒ There is merit in the proposed instrument proceeding to Gateway determination. The review of the proposed instrument by JRPP / PAC is justified.	Any additional comments: The department considers that an assessment of utility infrastructure services should be undertaken post Gateway and prior to exhibition. This assessment will determine the capacity of existing local infrastructure services to receive/supply the additional loadings from the seven (7) allotments. This assessment should also identify preliminary servicing arrangements of the site, and may include: - options for staging the development; - indicative costs for necessary upgrades. Given that the proposal relates to seven (7) additional dwellings it is considered that additional loadings will be minimal. Stormwater, access, scenic impact and contamination issues can be addressed either post Gateway or at DA stage.
☐ There is no merit in the proposed instrument proceeding to Gateway determination. The review of the proposed instrument by JRPP / PAC is not justified.	Any additional comments:

Prepared by: *Luke Blandford*

24/5/2013

Endorsed by: *Steve Murray* *24 May 2013*
Regional Director, Northern