
(ITEM ENV42/15) LAND USE AND PLANNING: LOCAL ENVIRONMENTAL PLAN: PLANNING PROPOSAL - AMENDMENT TO TENTERFIELD LOCAL ENVIRONMENTAL PLAN 2013

REPORT BY: Tamai Davidson, Senior Planner

SUMMARY

The purpose of this report is to seek Council's approval with respect to the submission of a "Planning Proposal" to the Department of Planning & Environment Local Environmental Plan Gateway Panel for determination in relation to the Tenterfield Heavy Vehicle Bypass.

BACKGROUND

The Planning Proposal incorporates an amendment to Council's current planning instrument – Tenterfield Local Environmental Plan 2013 (LEP) and forms the first step in the process to amend the current LEP.

The amendment seeks to incorporate a SP2 Infrastructure Zone in to the LEP which overlays on to the New England Highway Tenterfield Heavy Vehicle Bypass route recently announced by the Roads & Maritime Services.

It is recommended that Council initiate the process of an amendment to the LEP, having regard and effect of the amendment as described in this report and the attached Planning Proposal (Attachment 10 (Booklet 3)).

Tenterfield LEP 2013 commenced on 19 April 2013, providing legislative planning provisions for the Tenterfield Local Government Area. The LEP is referred to in legislation as an 'environmental planning instrument'. In order to carry out any alterations, additions or amendments to the LEP, Council must first prepare a Planning Proposal and seek a Gateway Determination from the NSW Department of Planning and Environment (DPE).

The purpose of the Planning Proposal is to create a Land Use Zone (*SP2 Infrastructure*) over the preferred route identified for the New England Highway Tenterfield Heavy Vehicle Bypass (HVB). Creation of the *SP2 Infrastructure* zone will reserve a permanent corridor for the future Tenterfield HVB in order to accommodate the future road and provide planning certainty for the community.

This report seeks Council's resolution with respect to the submission of the planning proposal to the DPE's LEP Gateway Panel for determination.

RELEVANCE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK

Tenterfield Shire One (1) Year Operational Plan 2015/16 identifies the following relevant Directions, which derive from the Tenterfield Shire Community Strategic Plan 2013-2023;

Direction 1.3 – The individual unique qualities and strong sense of local identity of Tenterfield's towns and villages is respected and recognised.

Direction 1.5 - Land use planning strategies and policies enhance and support sustainable economic growth

Direction 1.6 – Our places and spaces will be attractive, liveable, sustainable and grow the Shire

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Direction 1.8 – Tenterfield Shire has a heavy vehicle by-pass.

Support of the Planning Proposal is in accordance with Council's Directions contained within the Operational Plan 2015/16.

CURRENT POSITION

The amendment proposed is made through the drafting and 'making' of a further environmental planning instrument which has the effect of amending the current *Tenterfield LEP 2013*. In accordance with the provisions of Section 55 of the Environmental Planning & Assessment Act 1979, before an environmental planning instrument is made, Council is required to prepare a document that explains the intended effect of the proposed instrument and sets out the justification for making the proposed instrument (the **Planning Proposal**).

The Planning Proposal explains the intended effect of a proposed local environmental plan (LEP) and demonstrates the strategic merit of the proposed amendment and sets out the justification for making that plan. It will be used and read by the general public and those responsible for deciding whether the proposal should proceed. The preparation of the Planning Proposal is the first step and throughout the process, the Planning Proposal itself may evolve. Once Council resolves to proceed, the Planning Proposal is forwarded to the Department of Planning and Environment requesting a "Gateway Determination."

The Gateway Determination specifies whether the PP may proceed, and if so, under what circumstances. The purpose of the Gateway Determination is to ensure there is sufficient justification early in the process to proceed with a Planning Proposal. The Gateway Determination will confirm the information (which may include studies) and consultation required before the LEP can be finalised. The Gateway Determination also establishes the timeframe in which the required steps are to be carried out.

GOVERNANCE/POLICY IMPLICATIONS

The proposed amendment to *Tenterfield LEP 2013* will assist Council in the administering of its provisions and the orderly and economic development of land within the LGA and provide certainty for the community in relation to future development.

LEGAL IMPLICATIONS

There are currently no significant legal implications associated with the initiation of a Planning Proposal for lodgement with the DPE. Should a Gateway Determination be received and the Planning Proposal proceed, current provisions contained within Clause 5.1 of *Tenterfield LEP 2013* identify that any land acquisition required for future construction of the HVB is the responsibility of the Roads and Maritime Services. Clause 5.1 is copied below for reference;

"5.1 Relevant acquisition authority

(1) *The objective of this clause is to identify, for the purposes of section 27 of the Act, the authority of the State that will be the relevant authority to acquire land reserved for certain public purposes if the land is required to be acquired under Division 3 of Part 2 of the Land Acquisition (Just Terms Compensation) Act 1991 (the **owner-initiated acquisition provisions**).*

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Note. *If the landholder will suffer hardship if there is any delay in the land being acquired by the relevant authority, section 23 of the Land Acquisition (Just Terms Compensation) Act 1991 requires the authority to acquire the land.*

(2) The authority of the State that will be the relevant authority to acquire land, if the land is required to be acquired under the owner-initiated acquisition provisions, is the authority of the State specified below in relation to the land shown on the Land Reservation Acquisition Map (or, if an authority of the State is not specified in relation to land required to be so acquired, the authority designated or determined under those provisions).

Type of land shown on Map

Zone RE1 Public Recreation and marked "Local open space"

Zone RE1 Public Recreation and marked "Regional open space"

Zone SP2 Infrastructure and marked "Classified road"

Zone E1 National Parks and Nature Reserves and marked "National Park"

Authority of the State

Council

The corporation constituted under section 8 of the Act
Roads and Maritime Services

Minister administering the National Parks and Wildlife Act 1974

Note. *When this Plan was made it did not include Zone RE1 Public Recreation or Zone SP2 Infrastructure.*

(3) Development on land acquired by an authority of the State under the owner-initiated acquisition provisions may, before it is used for the purpose for which it is reserved, be carried out, with development consent, for any purpose." (Tenterfield LEP 2013).

In conjunction with the rezoning of land to SP2 Infrastructure, the wording of Clause 5.1 will need to be amended under the "Note."

ENVIRONMENTAL SUSTAINABILITY IMPLICATIONS

Environmental sustainability is the ability to maintain the qualities that are valued in the physical environment. During the processing of the LEP amendment it is envisaged that additional studies will be required to ensure that environmental sustainability issues are addressed.

SOCIAL SUSTAINABILITY IMPLICATIONS

The proposed LEP amendment promotes good planning practice and provides for certainty for the current and future communities of Tenterfield.

FINANCIAL IMPLICATIONS

Preparation of the Planning Proposal for submission to the DPE has been accommodated within the existing Department of Strategic Planning and Environmental Services work program, with supporting documentation contained in the Planning Proposal provided by the RMS. However, additional studies which may be required post the Gateway Determination have not been accommodated for in Council's budget.

POSSIBLE OPTIONS/ALTERNATIVE SOLUTIONS

1. Proceed with the Planning Proposal

The Planning Proposal seeks to improve planning certainty for the future development of land on, and in the vicinity of, the identified Tenterfield Heavy Vehicle Bypass. Zoning of the land allows Council to clearly identify affected land parcels and provides a legal means of notifying affected owners and potential purchasers of the intended HVB route.

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This is the recommended approach.

2. Defer or amend the planning proposal

Deferral of the Planning Proposal will delay the identification of the HVB route within Council's Strategic Planning document – *Tenterfield LEP 2013* and provide no level of certainty for the community. This approach is not recommended.

Should Council resolve to do so, amendment may be made to the Planning Proposal, however, for the purposes of obtaining a Gateway Determination, the information currently contained in the Planning Proposal is considered adequate.

3. Cease further action in relation to the Planning Proposal

For the same reasons outlined in relation to deferral, this approach is not recommended.

CONCLUSION

Preparation of the planning proposal and submission to the Department of Planning & Environment's Gateway Determination process seeks to insert a SP2 Infrastructure Zone in to *Tenterfield LEP 2013* and make ancillary amendments to the written instrument and maps.

Commencement of the process to amend the *Tenterfield LEP 2013* needs to be undertaken in line with legislative processes and the resultant amendment will provide Council and the community with certainty in terms of future strategic planning and development in Tenterfield.

RECOMMENDATION

- (1) That the Senior Planner's Report "Planning Proposal – Amendment to Tenterfield Local Environmental Plan 2013" be received and noted; and further
- (2) That Council endorses the Planning Proposal and forwards it to the Department of Planning & Environment requesting a Gateway Determination under the provisions of Section 56 of the *Environmental Planning & Assessment Act, 1979*.

ATTACHMENTS

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| 1 | Attachment 10 (Booklet 3) - Planning Proposal 2015-01 - Preferred Route | 74 |
| | - Tenterfield Heavy Vehicle Bypass | Pages |

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Resolved that:

- (1) The Senior Planner's Report "Planning Proposal – Amendment to Tenterfield Local Environmental Plan 2013" be received and noted; and further
- (2) That Council endorses the Planning Proposal and forwards it to the Department of Planning & Environment requesting a Gateway Determination under the provisions of Section 56 of the *Environmental Planning & Assessment Act, 1979*.
(Brian Murray/Carol Schiffmann)

Motion Carried

Register of Votes – Planning Matter