

Gateway Determination

Section 3.33 Planning Proposal

Permissibility of Council Pound

Council Ref.PP19/0003

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Table of Contents

INTRODUCTION	1
Background and Context	1
Part 1 Objectives and Intended Outcomes	2
Part 2 Explanation of Provisions	2
Part 3 Justification	3
Section A Need for the Planning Proposal	3
Section B Relationship to Strategic Planning Framework	3
Section C Environmental, Social and Economic Impact	4
Section D State and Commonwealth Interests	6
Part 4 Mapping	6
Part 5 Community Consultation	6
Part 6 Timeframe	6
Part 7 Summary and Conclusions	6
APPENDICES	8
Table 1 Consistency with Relevant SEPPs	8
Table 2 Consistency with s9.1 Planning Directions	9
Table 3 Timeline	19
Maps	20



INTRODUCTION

This Planning Proposal explains the basis for the amendment to the Tweed Local Environmental Plan 2014 sought by Council.

It has been prepared in accordance with Section 3.33 of the *Environmental Planning and Assessment Act 1979* (the Act) and the Department of Planning, Industry and Environment's: 'A Guide to Preparing Planning Proposals' (December 2018), for the purpose of a Section 3.34 Gateway determination review.

Council has not requested to be authorised as the local plan making authority to exercise the functions under Section 3.36(2) of the Act for this Planning Proposal. Planning Circular PS 18-013 of 14 December 2018 states that a Gateway determination may impose a condition delegating plan making functions to an officer within a council and this typically being the general manager.

Background and Context

As part of the ongoing responsible management of waste within the Shire the Council obtained planning approval for a new and expanded Resource Recovery Centre (RRC) to be located at Stotts Creek. The land under the master-plan includes the present home of the Council's animal pound and rehoming centre, which is earmarked for decommissioning in October 2019.

In anticipation of the closure the Council commenced site investigations in 2016 to secure a new location and this led to the making of an LEP amendment on 18 January 2019 for a Council owned property at 719 Eviron Road, Eviron. This property was deemed to be unsuitable and on 4th April 2019 Council resolved to proceed with a further LEP amendment to allow a council pound at 751 Eviron Road, Eviron, also owned by the Council. This latter property was purchased to provide a buffer to the future RRC and is characterised by steep and heavily vegetated terrain. Vehicular access to the site is presently unsuitable and requires significant reconstruction and realignment.

Following ongoing investigation into the suitability of the land at 751 Eviron Road the Council considered a further report at its meeting of 4 July 2019. The high cost associated with site preparation works, for example; achieving an adequate level of public safety relating to site access and the extent of environmental impact associated with required vegetation clearing and rehabilitation, were raised in the report as a probable prohibition to the suitability and use of this site for a new council pound and ancillary rehoming centre. The site constraints are further exacerbated by the limited footprint beyond which the further development (expansion) would be uneconomical and forcing either further relocation or establishment of a satellite council pound.

These investigations are among several that have been undertaken by Council previously and which to date have been unsuccessful. In a bid to ensure that animal impounding and rehoming services in the Tweed are maintained the Council has been able to secure a temporary lease with a private landowner and on land having adequate facilities, for the short-term. In response to the prevailing difficulty with securing a suitable long-term site and within a reasonable timeframe the Council resolved to amend the Tweed Local Environmental Plan 2014 to allow a council pound without development consent on any land. This approach would utilise the Part 5 'Infrastructure and environmental impact assessment' provisions of the Act, recognising the council pound as an essential council infrastructure and allowing Council greater flexibility with respect to managing that infrastructure over its lifetime. It is also recognised as being a more appropriate framework for public authorities delivering community based infrastructure services at the least cost, with the highest levels of environmental accountability and via a planning framework that is more time efficient.

A Council Pound is defined in the *Companion Animals Act 1998* (NSW), as:

"Council pound means:

- (a) a public or private pound established by a council under the Impounding Act 1993, or
- (b) any other place approved by a council as a place for the holding of animals for the purposes of this Act."

Rehoming center is not defined and for council purposes is an ancillary and complimentary use of a council pound focused on the rehoming of animals received by the council pound.

Part 1 Objectives and Intended Outcomes

To amend the Tweed Local Environmental Plan 2014 to enable a council pound on any land without consent.

Part 2 Explanation of Provisions

The proposed outcome will be achieved by:

- Amending the Tweed Local Environmental Plan 2014 to include a new clause specifically relating to development for a Council Pound on any land without consent, and
- Allowing a rehoming centre as an ancillary use to a Council Pound.

E.g.,

7.17 Council pound development

- (1) Development may be carried out by or on behalf of the Council without development consent on any land.

-
- (2) Development for the purpose of an animal rehoming centre is permitted without development consent if the development is ancillary to development for the purpose of a council pound.

- (3) In this clause-

council pound has the same meaning as in the *Companion Animals Act 1998*.

rehoming centre means a building or place used in association with a council pound for the keeping of animals awaiting rehoming by a rehoming organisation.

rehoming organisation has the same meaning as in the *Companion Animals Act 1998*.

Part 3 Justification

Section A Need for the Planning Proposal

- Q1.** *Is the planning proposal a result of any strategic study or report?*

No. This planning proposal arises from the need of Council to provide an ongoing and highly valued community service relating to animal management and welfare and there being an imminent closure of the existing council pound facility.

- Q2.** *Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?*

Yes. The Planning Proposal is the best means of achieving the intended outcome as it addresses the question of land-use permissibility.

Section B Relationship to Strategic Planning Framework

- Q3.** *Will the planning proposal give effect to the objectives and actions of the applicable regional, or district plan or strategy (including any exhibited draft plans or strategies)?*

Yes. Direction 21 of the North Coast Regional Plan 2036 Plan speaks to the coordination of local infrastructure delivery and although narrowly described around essential infrastructure centred on housing and related built environment in its wider context it would also capture community support infrastructure such as a council pound. This planning proposal endeavours to maximise cost-effective delivery of the council pound services and to potentially co-locate this with a rehoming centre, mirroring the current situation, by enabling flexibility around the selection of an appropriate site and by engaging a more efficient public infrastructure planning assessment pathway.

The North Coast Regional Plan 2036 also declares the north coast region as '*the best region in Australia to live, work and play thanks to its spectacular environment and vibrant communities*'. This

statement epitomises the on-going work of the councils within the region in their delivery of community focused and support infrastructure services, which includes animal welfare via public animal impounding and rehoming facility.

Q4. *Will the planning proposal give effect to a council's endorsed local strategic planning statement, or another endorsed local strategy or strategic plan?*

Yes. While the Tweed Council's local strategic planning statement is still being developed, a key strategy is the provision of appropriate community infrastructure to meet present and future population demand.

In addition, the Tweed Community Strategic Plan 2017-2027 (CSP), section 2.1 and 2.2 addressing the Tweed's built environment and its engagement with the community, has specific goals of delivering and regulating the built environment so as to balance the social, cultural, economic and environmental needs of the community.

The relocation and development of a new council pound is supported by the CSP and represents a key community infrastructure service asset.

Q5. *Is the planning proposal consistent with applicable State Environmental Planning Policies?*

Yes, this planning proposal is consistent with the relevant SEPPs.

Table 1 is located in the appendices and details the SEPPs considered when preparing this planning proposal.

Q6. *Is the planning proposal consistent with applicable Ministerial Directions (s9.1 Directions)?*

Yes, this planning proposal is consistent with the relevant Directions.

Table 2 is located in the appendices and details the Ministerial directions considered when preparing this planning proposal.

Section C Environmental, Social and Economic Impact

Q7. *Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?*

No, not as a result of this proposal.

Nonetheless, it is important to note that this planning proposal seeks to establish the approvals pathway for a council pound under Part 5 'Infrastructure and environmental assessment' of the planning Act.

By dint of cl.5.5 to Part 5, the assessment of adverse effect of an activity (development) on the environment is an obligation on the determining authority to ascertain in respect of the activity:

"...notwithstanding any other provisions of this Act or the provisions of any other Act or of any instrument made under this or any other Act, examine and take into account to the fullest extent possible all matters affecting or likely to affect the environment by reason of that activity."

Any future council pound development would be assessed under the stringent environmental regime established under Part 5.

Q8. *Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?*

No, there are no direct environmental effects as a result of this planning proposal.

The intention is to establish that a defined land-use, being a council pound, can be undertaken by or on behalf of the council without consent and on any land. This planning proposal does not identify specific land or a development concept and does not propose to make permissible a 'council' pound for a non-council purpose.

Any future proposed council pound will be deemed to be an 'activity' for the purposes of Part 5 and subject to the rigorous environmental assessment regime set out in the Act.

Q9. *How has the planning proposal adequately addressed any social and economic effects?*

The planning proposal will enable a more expedient assessment pathway for the establishment and long-term management and expansion of a council pound. It is widely recognised that Part 5 assessment is better suited to public infrastructure projects because of its flexibility and associated cost savings, whilst maintaining the highest standard of environmental assessment and mitigation.

This is particularly important under the prevailing circumstances because the Council has investigated several potential new sites for the council pound relocation over the preceding 2 years, including one published LEP amendment in January 2019, without success.

While social needs associated with a council pound will continue to be met in the short-term, albeit to a lesser degree, by the leasing of alternative premises, over the longer-term a more appropriately

located and fit for purpose site is needed. A new permanent site is considered to be more cost effective.

Section D State and Commonwealth Interests

Q10. *Is there adequate public infrastructure for the planning proposal?*

The planning proposal does not give rise to a direct demand for public infrastructure however, a future council pound will need to be assessed in respect of having adequate local infrastructure.

In all likelihood the existing situation is likely to be maintained into the future, with only one council pound being maintained and operated within the Shire. The demand for public infrastructure of State or Commonwealth interest therefore does not arise.

Q11. *What are the views of state and Commonwealth public authorities consulted in accordance with the Gateway determination?*

No consultation with State or Commonwealth authorities is needed however should there be a condition on the Gateway determination when issued the referral of the planning proposal to a nominated authority(s) will be undertaken at the appropriate time.

Part 4 Mapping

Nil.

Part 5 Community Consultation

This planning proposal is defined as a principal LEP because it relates to the whole of Tweed local government area. Public exhibition is 28 days.

Part 6 Timeframe

Table 3 is located in the appendices and details the timeline for the planning proposal.

Part 7 Summary and Conclusions

This planning proposal arose from a Council resolution in response to the difficulty in finding a suitable site for the relocation of the council pound, which is scheduled for decommissioning in October 2019.

Council recognised that locating and acquiring an appropriate new site that meets the long-term infrastructure servicing needs has and is continuing to take much longer than anticipated and that if left unchecked this could be worsened by then having to amend the Tweed LEP (again) and

undertaking a Part 4 development consent process. In the meantime and through necessity Council has entered into a short-term lease on private property.

The planning assessment pathway under Part 5 of the Act is tailored to public infrastructure activities and is widely accepted as being more suited to public works infrastructure and activities because of its inherently quicker and more flexible application and associated cost efficiency gains, while maintaining the highest standards of environmental assessment. For these reasons, Council has resolved to allow a council pound as a permissible land use without development consent on any land.

Including a new clause in the Tweed Local Environmental Plan 2014 is the preferred approach. This would enable the concurrent removal of Item 18 from Schedule 1 'Additional permitted uses' as the use would be permissible via the new clause.

Once the new council pound is established the LEP may be further amended to remove the new clause and to insert a new Item in Schedule 1 to nominate the new site and use.

APPENDICES

Table 1 **Consistency with Relevant SEPPs**

State Environmental Planning Policy	Consistent
SEPP No 44—Koala Habitat Protection Relevant	consistent
SEPP No 55—Remediation of Land	consistent
SEPP (Infrastructure) 2007	consistent
SEPP (Coastal Management) 2018	consistent

Table 2 Consistency with s9.1 Planning Directions

S9.1 Direction	Application	Comment
1.1 Business and Industrial Zones	<p><u>Summary of Objectives</u></p> <p>To protect, encourage and support employment / strategic centres.</p> <p><u>Application</u></p> <p>When a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed business or industrial zone (including the alteration of any existing business or industrial zone boundary).</p>	consistent
1.2 Rural Zones	<p><u>Objectives:</u></p> <p>The objective of this direction is to protect the agricultural production value of rural land.</p> <p><u>Application:</u></p> <p>A planning proposal must:</p> <p>(a) not rezone land from a rural zone to a residential, business, industrial, village or tourist zone.</p>	consistent

S9.1 Direction	Application	Comment
	(b) not contain provisions that will increase the permissible density of land within a rural zone (other than land within an existing town or village).	
1.3 Mining, Petroleum Production and Extractive Industries	<p><u>Objectives:</u></p> <p>The future extraction of State or regionally significant reserves of coal, other minerals, petroleum and extractive materials is not compromised by inappropriate development.</p> <p><u>Application:</u></p> <p>When a relevant planning authority prepares a planning proposal that would have the effect of:</p> <p>(a)prohibiting the mining of coal or other minerals, production of petroleum, or winning or obtaining of extractive materials, or</p> <p>(b)restricting the potential development of resources of coal, other minerals, petroleum or extractive materials which are of State or regional significance by permitting a land use that is likely to be incompatible with such development.</p>	consistent
1.4 Oyster Aquaculture	<u>Objectives:</u>	consistent

S9.1 Direction	Application	Comment
	<p>To protect Priority Oyster Aquaculture Areas (POA) and oyster aquaculture outside such an area, from adverse impacts on water quality, the health of the oysters and oyster consumers.</p> <p><u>Application:</u></p> <p>When there is a change in land use that could result with adverse impact or incompatibility of land uses.</p>	
1.5 Rural Lands	<p><u>Objectives:</u></p> <p>To protect the agricultural production value of rural land and to facilitate the orderly and economic development of rural lands for rural and related purposes.</p> <p><u>Applies when:</u></p> <p>(a) a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed rural or environment protection zone, or</p> <p>(b) a relevant planning authority prepares a planning proposal that changes the existing minimum lot size on land within a rural or environment protection zone.</p>	consistent
2.1 Environment Protection Zones	<p><u>Objective</u></p> <p>To protect and conserve environmentally sensitive areas.</p>	consistent

S9.1 Direction	Application	Comment
	<u>Application</u> When a relevant planning authority prepares a planning proposal.	
2.2 Coastal Protection	<u>Objective</u> To implement the principles in the NSW Coastal Policy. <u>Application</u> When a relevant planning authority prepares a planning proposal that applies to land in the coastal zone.	consistent
2.3 Heritage Conservation	<u>Objective</u> To conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance. <u>Application</u> When a relevant planning authority prepares a planning proposal.	consistent

S9.1 Direction	Application	Comment
3.1 Residential Zones	<p><u>Summary of Objectives:</u></p> <ul style="list-style-type: none"> (a) to encourage a variety and choice of housing types, (b) to make efficient use of existing infrastructure and services, (c) to minimise the impact of residential development on the environment and resource lands. <p><u>Application</u></p> <p>When a planning proposal affects land within:</p> <ul style="list-style-type: none"> (a) an existing or proposed residential zone, or (b) any other zone in which significant residential development is permitted or proposed to be permitted. 	consistent
3.5 Development Near Licensed Aerodrome	<p><u>Summary of Objectives:</u></p> <ul style="list-style-type: none"> (a) ensure the effective and safe operation of aerodromes, (b) ensure that their operation is not compromised by development, (c) ensure development for residential purposes or human occupation, if situated on land within the Australian Noise Exposure Forecast contours of between 20 and 25, incorporates appropriate mitigation measures. 	consistent

S9.1 Direction	Application	Comment
	<p><u>Application:</u></p> <p>When a planning authority prepares a planning proposal that will create, alter or remove a zone or a provision relating to land in the vicinity of a licensed aerodrome.</p> <p><u>What must be done</u></p> <p>Summary: a planning proposal that sets controls for the development of land in the vicinity of a licensed aerodrome must be subject to prescribed consultation and take certain prescribed matters into account.</p>	
3.6 Shooting Ranges	<p><u>Objectives:</u></p> <ul style="list-style-type: none"> (a) to maintain public safety and amenity, (b) to reduce land use conflicts, (c) to identify issues for consideration when rezoning land adjacent to an existing shooting range. <p><u>Application:</u></p> <p>When a planning authority prepares a planning proposal that will affect, create, alter or remove a zone or a provision relating to land adjacent to a shooting range.</p>	consistent

S9.1 Direction	Application	Comment
	<p><u>What must not be done</u></p> <p>A planning proposal must not seek to rezone land adjacent to and/ or adjoining an existing shooting range that has the effect of permitting more intensive land uses than those which are permitted under the existing zone or permitting land uses that are incompatible with the noise emitted by the shooting range.</p>	
4.1 Acid Sulfate Soils	<p><u>Objective</u></p> <p>To avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulfate soils.</p> <p><u>Application:</u></p> <p>When a relevant planning authority prepares a planning proposal that will apply to land having a probability of containing acid sulfate soils.</p>	consistent
4.3 Flood Prone Land	<p>Applies when a relevant planning authority prepares a planning proposal that creates, removes or alters a zone or a provision that affects flood prone land.</p>	consistent

S9.1 Direction	Application	Comment
4.4 Planning for Bushfire Protection	<p><u>Objective</u></p> <p>(a) to protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas, and</p> <p>(b) to encourage management of bush fire prone areas.</p> <p><u>Application:</u></p> <p>When a relevant planning authority prepares a planning proposal that will affect, or is in proximity to land mapped as bushfire prone land.</p>	consistent
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	<p><u>Objective</u></p> <p>(a) to ensure that the best agricultural land will be available for current and future generations to grow food and fibre,</p> <p>(b) to provide more certainty on the status of the best agricultural land, and</p> <p>(c) to reduce land use conflict.</p> <p><u>Application:</u></p> <p>When a relevant planning authority prepares a planning proposal for land mapped as: State significant farmland,</p>	consistent

S9.1 Direction	Application	Comment
	regionally significant farmland, or significant non-contiguous farmland. A planning proposal must not rezone land identified as “State Significant Farmland”, “Regionally Significant Farmland” or “significant non-contiguous farmland” for urban or rural residential purposes.	
5.10 Implementation of Regional Plans	<p><u>Objective</u></p> <p>To give legal effect to the vision, land use strategy, goals, directions and actions contained in Regional Plans.</p> <p>Applies when preparing a planning proposal.</p>	consistent
6.1 Approval and Referral Requirements	<p><u>Objective</u></p> <p>To ensure that LEP provisions encourage the efficient and appropriate assessment of development.</p> <p><u>Application:</u> When a relevant planning authority prepares a planning proposal.</p>	consistent

S9.1 Direction	Application	Comment
	<u>What must be done:</u> Ensure provisions minimise concurrence roles, consultation or referral of DAs to public authority.	
6.3 Site Specific Provisions	<u>Objective</u> To discourage unnecessarily restrictive site specific planning controls. <u>Application:</u> When a relevant planning authority prepares a planning proposal that will allow a particular development.	consistent

Table 3 Timeline

Task	Timeframe	Completed
Referral of the planning proposal for a Gateway determination	September	
Gateway Determination	October	
Public exhibition	October/November	
Agency consultation	October/November	
Review submissions, respond and prepare V3 planning proposal for Council's consideration	December	
Council report to finalise and refer the plan to the DPE to be made	December – February 2020	
Referral of the Plan to the DPE for making	February	
Plan to be made within 9 months of Gateway	6 months	

Maps

N/A



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