

Tweed LEP 2014 - To facilitate the erection of a dwelling on part of a lot at No. 438 Environ Road, Environ

Proposal Title :	Tweed LEP 2014 - To facilitate the erection of a dwelling on part of a lot at No. 438 Environ Road, Environ		
Proposal Summary :	The Planning Proposal seeks to amend Tweed LEP 2014 to permit a dwelling house at No. 438 Environ Road, Environ (Part of Lot 8 DP 12676).		
PP Number :	PP_2016_TWEED_002_00	Dop File No :	16/04134

Proposal Details

Date Planning Proposal Received :	07-Mar-2016	LGA covered :	Tweed
Region :	Northern	RPA :	Tweed Shire Council
State Electorate :	TWEED	Section of the Act :	55 - Planning Proposal
LEP Type :	Policy		

Location Details

Street :	No. 438 Environ Road		
Suburb :	Environ	City :	Postcode :
Land Parcel :	Part of Lot 8 DP 12676		

DoP Planning Officer Contact Details

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DoP Project Manager Contact Details

Contact Name :	Paul Garnett
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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

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MDP Number :	Date of Release :
Area of Release (Ha) :	Type of Release (eg Residential / Employment land) : N/A
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 :	The Department of Planning and Environment's Code of Practice in relation to communications 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 :

External Supporting Notes :

Clause 4.2B of the Tweed LEP 2014 provides requirements for granting development consent to the erection of a dwelling house on rural zoned land.

These requirements include meeting minimum lot sizes, the lot being created in accordance with specific current or former planning provisions or that the lot is an existing holding.

The subject site is zoned part RU1 Primary Production and part RU2 Rural Landscape. Council has determined however that development consent cannot be granted for a dwelling on this rural lot as it does not meet the requirements of Clause 4.2B.

The Planning Proposal in this regard is seeking to amend the Tweed LEP 2014 to confirm that development consent could be granted for a dwelling house on this land. The proposal is limited to the RU2 Rural Landscape zoned portion of the site.

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 clearly stated in the proposal. The Planning Proposal seeks to amend LEP provisions to confirm that development consent could be granted for a dwelling on the subject site.**

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

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

Comment : **The Planning Proposal provides an explanation of provisions.**

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The proposal currently states that an amendment to Schedule 1 and the Additional Permitted Use Map under the Tweed LEP 2014 is being sought. It explains that listing a site specific provision under Schedule 1, which states that a dwelling house is permitted with consent on the land, will ensure that the intended outcomes of the Planning Proposal can be achieved.

It is recognised that there is ambiguity regarding the use of Schedule 1 for permitting a dwelling on the site and that there may be alternative approaches for achieving intended outcomes. These matters are discussed in more detail under the 'Assessment Section' of this 'Planning Team Report'.

The Department's guidelines for preparing Planning Proposals confirms that the objectives and intended outcomes of a Planning Proposal in conjunction with Part 2 - Explanation of Provisions, need to be specific enough to accurately reflect the desired outcome yet flexible enough to allow for alternative ways of achieving the desired result to be considered.

In this regard, it is considered suitable to require the Planning Proposal be revised prior to it being placed on public exhibition to include a plain English description of the intended provisions – i.e. that the Tweed LEP 2014 will include a provision to enable consideration of a dwelling on the subject site consistent with the requirements of Tweed LEP 2014.

This would ensure that the community is fully informed of the intended outcome of the proposal at public exhibition stage and negate the requirement to re-exhibit the proposal once a preferred mechanism is determined.

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

1.5 Rural Lands

4.1 Acid Sulfate Soils

4.3 Flood Prone Land

4.4 Planning for Bushfire Protection

5.1 Implementation of Regional Strategies

5.3 Farmland of State and Regional Significance on the NSW Far North Coast

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 55—Remediation of Land

SEPP (Infrastructure) 2007

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? **No**

If No, explain :

See the 'Assessment' section of this planning team report

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment :

The Planning Proposal has included a map that identifies the site, as well as a proposed Additional Permitted Use Map.

These maps are considered suitable for exhibition purposes. Refer to comments under

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the 'Assessment Section' of this 'Planning Team Report' regarding the Additional Permitted Use Map being retained in the Planning Proposal. This is despite the recommended changes to Part 2 - Explanation of Provisions of the Planning Proposal.

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : The Planning Proposal indicates that community consultation will be undertaken and nominates a 14 day timeframe for this consultation period.

A 14 day community consultation period is considered appropriate given the proposal would be defined as low impact in accordance with the Department's guidelines. It is site specific and consistent with the surrounding land use pattern.

Consultation with the Office of Environment and Heritage and NSW Rural Fire Service should be made a requirement as discussed further below.

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 : Amendments are recommended to the Planning Proposal prior to it being publicly exhibited. These are discussed throughout this Planning Team Report and listed as proposed conditions to the Gateway determination.

The Planning Proposal generally satisfies the adequacy criteria by:

1. Providing appropriate objectives and intended outcomes;
2. Providing an explanation of the provisions (noting the suggested amendments in this Planning Team Report);
3. Providing a justification for the proposed amendments (noting the changes recommended to the Planning Proposal in this Planning Team Report);
4. Providing maps which suitably identify the relevant site;
5. Outlining that community consultation will be undertaken; and
6. Providing a project timeframe which suggests completion within 7 months.

Timeline

- The Planning Proposal includes a project timeline which estimates that the Plan could be finalised by September 2016 (7 months). It is considered that a 9 month time frame would be appropriate considering some minor amendments to the Planning Proposal are being required. This does not restrict Council from finalising the LEP amendment sooner.

Delegation.

- Council has not accepted plan making functions nor has it requested delegation to finalise the subject proposal. It is recommended that an Authorisation for the execution of delegation not be issued to Council in this instance.

Proposal Assessment

Principal LEP:

Due Date :

Comments in relation to Principal LEP : The Tweed LEP commenced on the 4th April 2014. This Planning Proposal seeks to make amendments to the Tweed LEP 2014.

Assessment Criteria

Need for planning proposal :

The Planning Proposal is not the result of any strategic study or review.

Whilst a dwelling is already listed as a permissible land use under the RU1 Primary Production and RU2 Rural Landscape zones, Council has determined that development consent cannot be granted for a dwelling on the land in accordance with Clause 4.2B of the Tweed LEP 2014. Council does consider however that a dwelling should be able to be proposed and considered for this land, given its size and context. The 2.88ha site is surrounded by small rural lifestyle lots, many of which contain dwellings. It is Council's understanding that the site was created in 1923 for rural residential purposes, however due to a change in planning regulations the land does not meet the requirements for a dwelling under Clause 4.2B.

The proposal seeks to permit a dwelling only on the RU2 Rural Landscape zoned portion of the site. This is to ensure that a dwelling is not located on land mapped as regionally significant farmland and in turn, minimise the potential for impacting adjoining agricultural practices.

Council is seeking to establish this enabling clause in the LEP by listing and mapping the RU2 zoned portion of the site under Schedule 1 and on the Additional Permitted Use Map. It is Council's interpretation that listing the use under Schedule 1 overrides any other development standard in the LEP that may have the effect of restricting consent being granted for the dwelling. This is due to Clause 2.5(2) of the Tweed LEP 2014. It is not known if this interpretation has been legally tested.

The use of Schedule 1 for permitting dwellings on rural lots which do not meet the requirements of Clause 4.2B is common to the Tweed LEP 2014 and other LEPs throughout the Northern Region and NSW. Whilst this is acknowledged, it has also been common for the Gateway to require Council's to utilise an alternative approach for enabling dwelling eligibility, to reduce reliance and use of Schedule 1.

Clause 4.6 of the Tweed LEP 2014 could be considered as a mechanism which already provides opportunity for a dwelling to be considered on the land. There are also alternative opportunities for amending the LEP to ensure development consent could be considered. These include a 'Dwelling Opportunities Map', which has been pursued under the Richmond Valley and Port Macquarie-Hastings LEPs or alternatively amending the minimum lot size standards for the site. A minimum lot size could be applied that would permit a dwelling but not facilitate subdivision.

None of these alternative opportunities have been discussed under the Planning Proposal despite this being a required component for a Planning Proposal in accordance with the Department's guidelines.

Council has provided advice subsequent to submitting the proposal that it does not consider these alternative options as being suitable. It does not consider that a dwelling proposal would meet the requirements of Clause 4.6 and it is considering the suitability for including a 'Dwelling Opportunities Map' under a wider strategic review for all rural land in the LGA.

Having regard to the history of the land and the surrounding development pattern, it is considered that the proposal has merit and should be able to proceed. As discussed previously in this report and above, it is considered suitable however that Part 2 – Explanation of Provisions should be rewritten to include a plain English explanation.

The requirement for this Planning Proposal indicates that a wider strategic review for this area is needed. This may include reviewing zones or minimum lot size standards that are more consistent with the existing land use pattern.

Consistency with strategic planning framework :

FAR NORTH COAST REGIONAL STRATEGY (FNCRS)

Whilst the proposal does not seek to 'release new land' for residential or rural residential purposes, it does seek to permit a dwelling on a lot not consistent with the current planning provisions. In this regard, it could be considered that the proposal does seek to permit 'development on a greenfield site'. In accordance with the Strategy, development on a greenfield site which is located west of the Coastal Zone can only be considered where it meets the Sustainability Criteria.

The proposal is minor and would meet the requirements of the Sustainability Criteria. The proposal seeks to permit a dwelling on a rural life style sized allotment, which due to the surrounding subdivision and land use pattern is not suited for extensive agricultural use. A dwelling on the land would not raise any issues regarding land use conflict, land fragmentation or infrastructure provision.

DRAFT NORTH COAST REGIONAL PLAN

The Draft North Coast Regional Plan is currently on public exhibition. Once adopted this Plan will replace the Far North Coast Regional Strategy and will guide strategic planning across the North Coast over the next 20 years.

The Draft Plan includes a range of actions for considering LEP amendments. The key actions specific to this proposal relate to: identifying and protecting areas of high environmental values; permitting complementary uses in rural zones; focusing growth to the least sensitive and constrained areas; and providing sufficient housing supply.

Of particular note the Draft Plan contains requirements that new rural residential 'zonings' are confined to areas outside of the Coastal Area and / or in an approved Local Growth Strategy.

Whilst the proposal does not seek to 'zone' land, it is considered to be generally consistent with the actions of the Draft Plan given that it will permit a new housing opportunity on an existing rural residential sized allotment that is outside the Coastal Area and will not have any significant impacts on natural resources or infrastructure.

CONSISTENCY WITH LOCAL STRATEGIES

The site is not identified under any existing local growth strategy. The Planning Proposal includes an assessment against Council's Community Action Plan, yet the proposal does not include a title reference that confirms the assessment relates to the Community Action Plan. This title should be included in the Planning Proposal prior to it being publicly exhibited.

STATE ENVIRONMENTAL PLANNING POLICIES

No inconsistencies with the provisions under the SEPPs have been identified.

The proposal is consistent with the Rural Planning Principles under the Rural Lands SEPP given that it will facilitate rural lifestyle opportunities on rural land, without having any detrimental impact on agricultural and infrastructure resources.

In regard to SEPP 55, Council is satisfied that the risk of site contamination is low and should not preclude the proposal from progressing.

Whilst the site is greater than 1 hectare, it is relatively clear of vegetation and is unlikely to contain potential Koala habitat or the requirement for a Plan of Management in accordance with SEPP 44.

It is noted that if an amendment to the minimum lot size map was undertaken to permit a dwelling on the land under the Tweed LEP, that a dwelling may also be permitted on the

land under the Codes SEPP as complying development. No issues are raised with this potential outcome.

SECTION 117 DIRECTIONS

The following Directions are applicable to the proposal.

1.2 Rural Zones, 1.5 Rural Lands, 2.1 Environmental Protection Zones, 2.3 Heritage Conservation, 2.4 Recreational Vehicle Areas, 3.3 Home Occupations, 4.1 Acid Sulfate Soils, 4.3 Flood Prone Land, 4.4 Planning for Bushfire Protection, 5.1 Implementation of Regional Strategies, 5.3 Farmland of State and Regional Significance on the NSW Far North Coast, 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 or not yet justified with Directions 4.1, 4.3 and 4.4.

Direction 4.1 Acid Sulfate Soils

The site has been mapped as potentially containing ASS, however the proposal is not supported by an ASS assessment or management plan. The existing provisions under the LEP are considered suitable for ensuring ASS is appropriately considered at DA stage. The inconsistency with this Direction is justified as being of minor significance.

Direction 4.3 Flood Prone Land

The site is mapped as being part flood prone and the proposal seeks to increase development potential on the land. The inconsistency with this Direction is justified as being of minor significance, given the existing controls under the LEP.

While the inconsistency is considered to be of minor significance, it is considered appropriate that the Planning Proposal be referred to the Office of Environment and Heritage for comment.

Direction 4.4 Planning for Bushfire Protection

The site is mapped as partly being within a bushfire prone buffer area. Consistency with the Direction is currently unresolved. Consultation with the NSW Rural Fire Service would be required post Gateway to satisfy the requirements of the Direction.

Environmental social
economic impacts :

The 2.8 hectare site is predominantly cleared of vegetation. It is located in an established rural residential area, despite it historically being zoned for large lot rural purposes. The addition of one additional dwelling in the area is not likely to raise any significant impact on agricultural uses or infrastructure resources. Onsite services would be required.

The proposal notes that a review of the AHIMS register has been undertaken which has confirmed that no culturally significant sites have previously been identified in the area. Considering the history of the site and surrounding context, this search is considered suitable to allow progression of the Planning Proposal. A copy of the results of this search should be appended to the Planning Proposal prior to it being exhibited.

Issues regarding bushfire, ASS, flooding and contamination have been discussed above. It is considered that the merits for any future dwelling and responses to these natural hazards could be appropriately considered through the development approval process.

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Assessment Process

Proposal type : **Routine** Community Consultation Period : **14 Days**

Timeframe to make LEP : **9 months** Delegation : **DDG**

Public Authority **Office of Environment and Heritage**
Consultation - 56(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, reasons :

Identify any additional studies, if required. :

Other - provide details below

If Other, provide reasons :

No additional studies are required due to the nature of the proposal.

The proposal states that an AHIMS search has been undertaken, and therefore this should be appended to the exhibited Planning Proposal.

It is recognised that the RFS may require a preliminary bushfire impact assessment to be prepared and submitted with the proposal to confirm compliance with Planning for Bushfire Protection 2006. The Gateway determination could make this additional review a requirement however, given that the majority of the site is located outside of a bushfire prone buffer area and therefore a dwelling could be established on the land without requiring a 79BA assessment. This will be a matter for consultation between Council and the NSW RFS.

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 :

Documents

Document File Name	DocumentType Name	Is Public
Planning Proposal.pdf	Proposal	Yes
cover letter.pdf	Proposal Covering Letter	Yes
16-03-10 Planning Team Report.pdf	Determination Document	No

Planning Team Recommendation

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

S.117 directions: **1.2 Rural Zones**
1.5 Rural Lands

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4.1 Acid Sulfate Soils
 4.3 Flood Prone Land
 4.4 Planning for Bushfire Protection
 5.1 Implementation of Regional Strategies
 5.3 Farmland of State and Regional Significance on the NSW Far North Coast
 6.3 Site Specific Provisions

Additional Information :

It is **RECOMMENDED** that the Acting Director Regions, Northern, as delegate of the Minister for Planning, determine under section 56(2) of the EP&A Act that an amendment to the Tweed Local Environmental Plan 2014 to permit the erection of a dwelling on part of Lot 8 DP 12676, Environ Road, Environ, should proceed subject to the following conditions:

1. The Planning Proposal is required to be updated prior to community consultation, including the following:

- (a) confirm in the proposal title and throughout the document that the LEP amendment relates to 'part of Lot 8 DP 12676'.
- (b) update Part 2 – Explanation of Provisions to include a plain English description of the intended outcomes;
- (c) append a copy of the AHIMS search records; and
- (d) reference the Tweed Community Action Plan.

2. Community consultation is required under sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") as follows:

- (a) the Planning Proposal must be made publicly available for 14 days; and
- (b) 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 local environmental plans (Planning and Infrastructure, 2013)'.

3. 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:

- (a) NSW Rural Fire Service
- (b) Office of Environment and Heritage

4. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the 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).

5. The timeframe for completing the LEP is to be 9 months from the week following the date of the Gateway determination.

6. Section 117 Directions - It is recommended that:

- (a) The Secretary's delegate can be satisfied that the Planning Proposal's inconsistencies with s117 Directions 4.1 Acid Sulfate Soils and 4.3 Flood Prone Land are of minor significance.
- (b) Consultation is required in relation to s117 Direction 4.4 Planning for Bushfire Protection with the NSW Rural Fire Service.
- (c) The Secretary's delegate can be satisfied that the Planning Proposal is consistent with all other relevant s117 Directions.

7. The Planning Proposal is considered to be consistent with all relevant SEPPs.

Supporting Reasons :

The reasons for the above recommendations for the Planning Proposal are as follows:
 - The recommended conditions to the Gateway are required to provide adequate consultation, accountability and progression.

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Signature: _____



Printed Name: _____

PAUL CARVETT

Date: _____

16/3/16

Acting Team Leader Local Planning