

Planning and Assessment

Gateway determination report

Tweed Gateway determination: PP_2020_TWEED_005_00

Purpose: To recommend the Director, as delegate of the Minister, determine that planning proposal PP_2020_TWEED_005_00 should proceed.

Analysis: The planning proposal seeks to enable a Council Pound and Rehoming Centre as an additional permitted use at 92 Lundberg Drive, South Murwillumbah. The planning proposal is considered to have merit and should proceed subject to conditions.

1. INTRODUCTION

LGA	Tweed
PPA	Tweed Shire Council
NAME	Enable a Council Pound and Rehoming Centre as an additional permitted use at 92 Lundberg Drive, South Murwillumbah (0 homes, 0 jobs)
NUMBER	PP_2020_TWEED_005_00
LEP TO BE AMENDED	Tweed Local Environmental Plan 2014
ADDRESS	92 Lundberg Drive, South Murwillumbah
DESCRIPTION	Lot 1 DP 232745 & Part Lot 2 DP 1139059
RECEIVED	2/10/2020
FILE NO.	IRF20/5063
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required.
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal.

1.1 Description of planning proposal

Tweed Shire Council have decommissioned their Stotts Creek animal pound and rehoming centre and have been investigating various locations to re-locate the pound. On 18 January 2019 an amendment to permit an additional permitted use for a pound was approved for 719 Eviron Road, Eviron which was later deemed unsuitable after further investigation.

Council have now identified another potentially suitable site at Lot 1 DP 232745 and Part Lot 2 DP 1139059, at 92 Lundberg Drive, South Murwillumbah. The planning proposal seeks to enable a Council Pound and Rehoming Centre as an additional permitted use at this site.

1.2 Site description

The subject site is located at 92 Lundberg Drive, South Murwillumbah, Lot 1 DP 232745 and Part Lot 2 DP 1139059 (Figure 1 blue area). The site is approximately 6.7ha in area and is partially a former quarry site that has been rehabilitated. The NSW Rural Fire Service Tweed Fire Control Centre is located on the north east side of Lot 1 DP 232745. There is a building, sheds and formed carpark with dedicated entrance from Lundberg Drive. Entry points from Lundberg Drive are also located to the north above the RFS and one to the south (to the former quarry) of Lot 1 DP 232745.



Figure 1 – Site Location

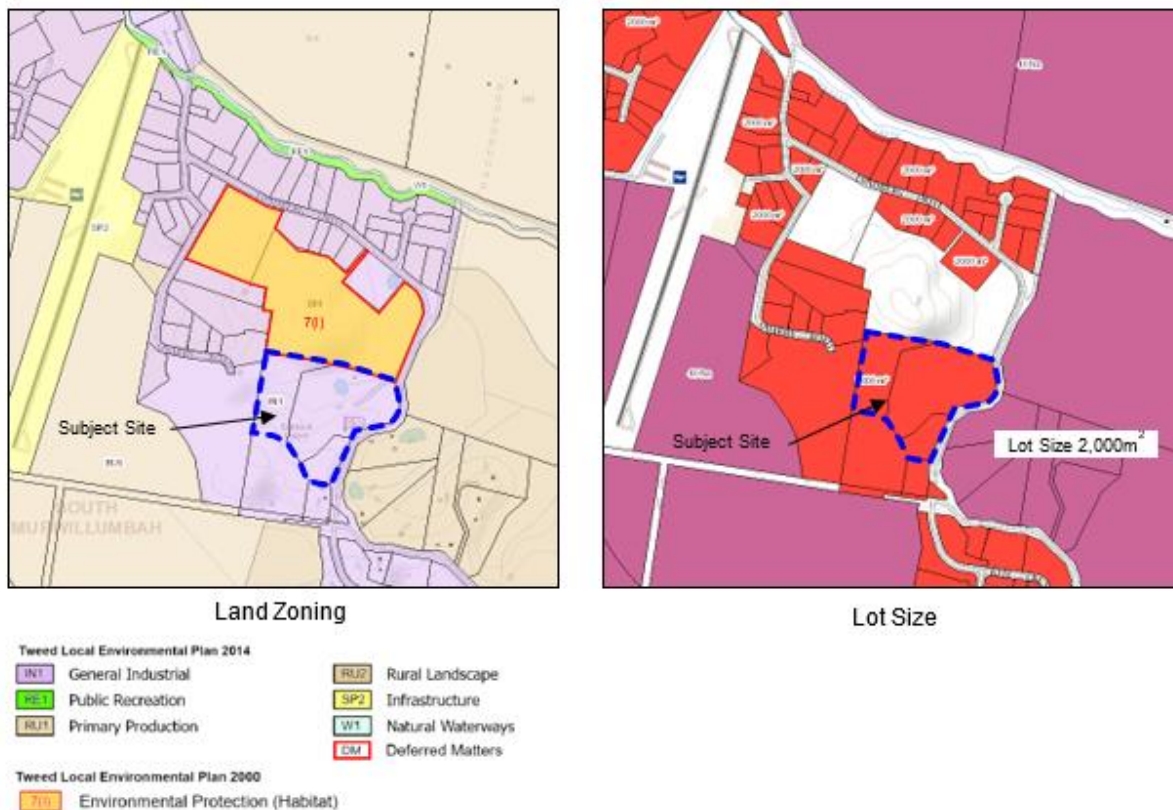
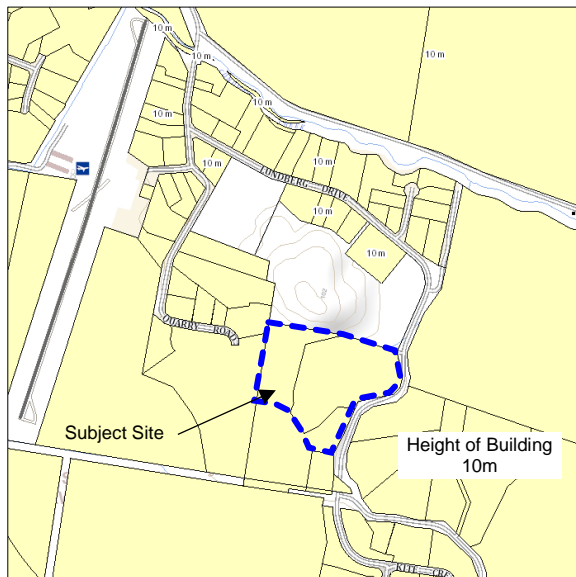


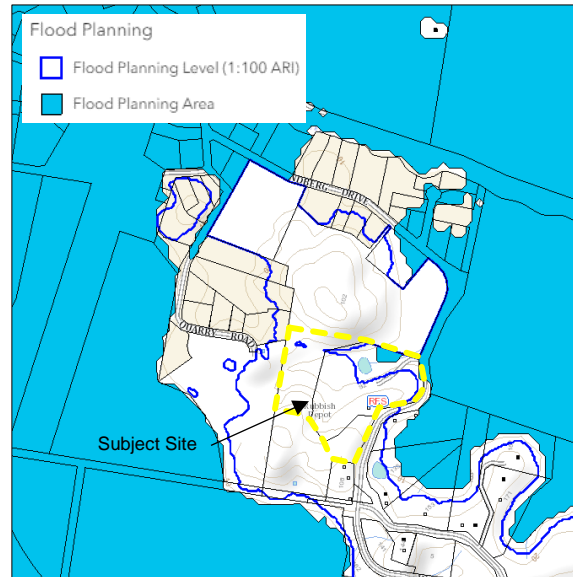
Figure 2 – Current Land Zoning & Lot Size
Source – Submitted Planning Proposal and ePlanning Spatial Viewer

1.3 Existing planning controls

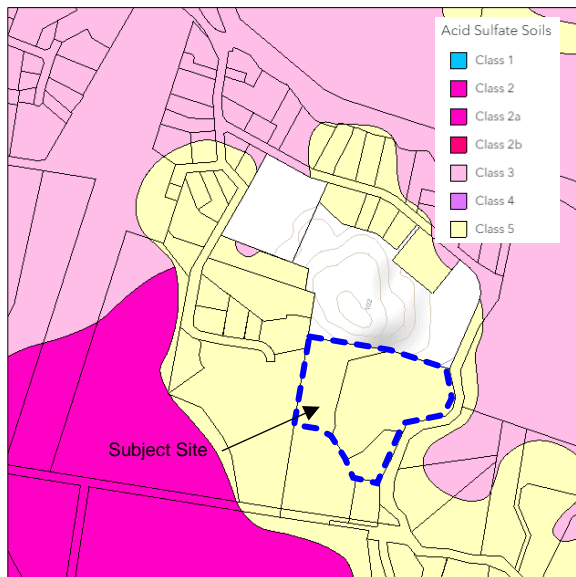
The subject site is zoned IN1 General Industrial; has a lot size of 2,000m² (Figure 2); contains a small portion of Flood Planning Area; has a Height of Buildings of 10m; contains small portions of Category 1 and 2 Bushfire Prone Land; has Class 5 Acid Sulfate Soils; has a height limit of 47m on the TLEP 2014 Obstacle Limitation Surface Map; and has identified site investigation areas for Koalas under SEPP (Koala Protection) 2019 (Figure 3). The subject site also sits within the Urban Growth Area for Murwillumbah and has a small portion of potential High Environmental Land (Figure 4).



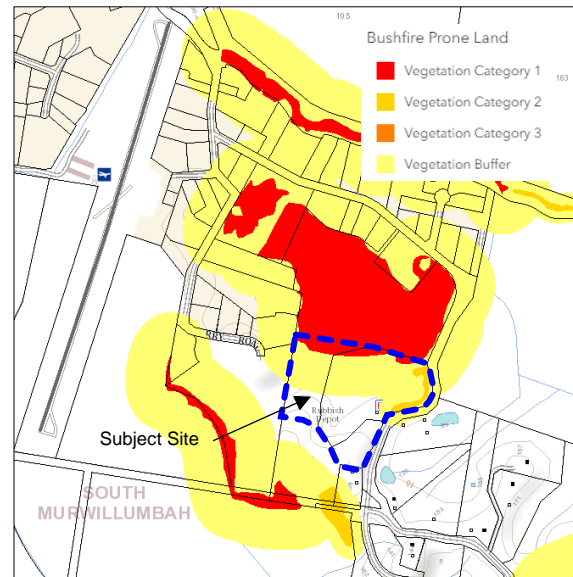
Height of Buildings



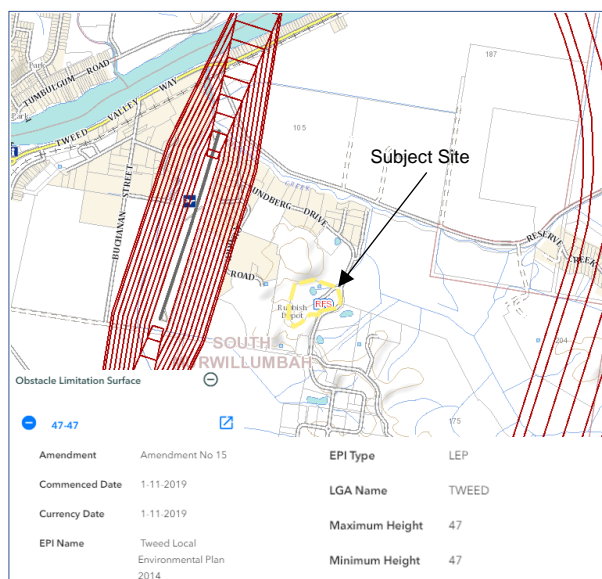
Flood Planning



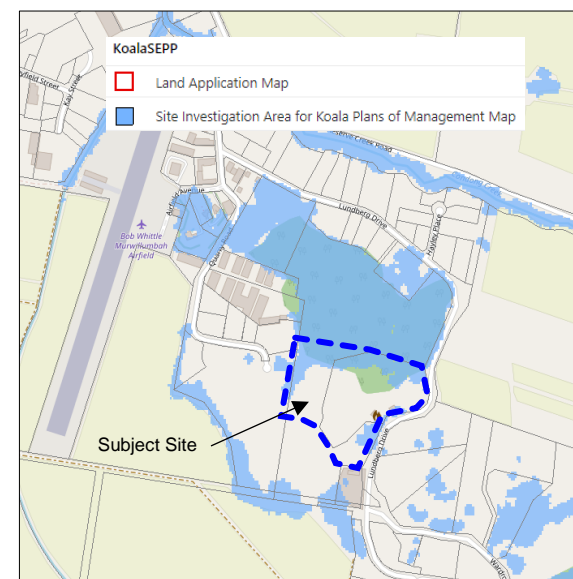
Acid Sulfate Soils



Bushfire Prone Land



Obstacle Limitation Surface



SEPP Koala KPOM Site Investigation Area

Figure 3 – Existing Planning Controls

Source – ePlanning Spatial Viewer & SEPP Koala Habitat Protection Viewer



Figure 4
HEV Land; Urban Growth Boundary and Potential Employment Lands;
and Important Farmland
Source – North Coast Regional Plan 2036

1.4 Surrounding area

The northern boundary of the subject site is adjacent to land zoned 7(l) Environmental Protection (Habitat) under the Tweed Local Environmental Plan (TLEP) 2000 which is deferred under the TLEP 2014. This area is also identified as having koala investigation area (Figure 3).

The subject site is within an IN1 General Industrial area. Brims Quarry is to the west of the subject site and just beyond the immediate boundary to the north east, south and west of the subject site are areas identified as Important Farmland in the NCRP 2036 (Figure 4).

To south is the Murwillumbah Pistol Club and on the opposite side of Lundberg Drive to the south east is some rural residential housing. This area has been identified as potential employment lands in the North Coast Regional Plan (NCRP) 2036 (Figure 4).

The planning proposal states that *“There are about 4 residential premises located in near proximity to the south-south west. These properties have been acquired for and are currently the subject of a planning proposal for industrial and commercial rezoning”*.

It is noted that the residential premises mentioned are to the south-south east not west and Council have now advised these lots to have been acquired by Wardrop Valley Pty Ltd, which have been marked in Figure 5 and are currently the subject of a planning proposal for the rezoning of these properties for the purposes of employment land use (Figure 6).



Figure 5 – Lots Acquired by Wardrop Valley Pty Ltd
Source – Tweed Shire Council

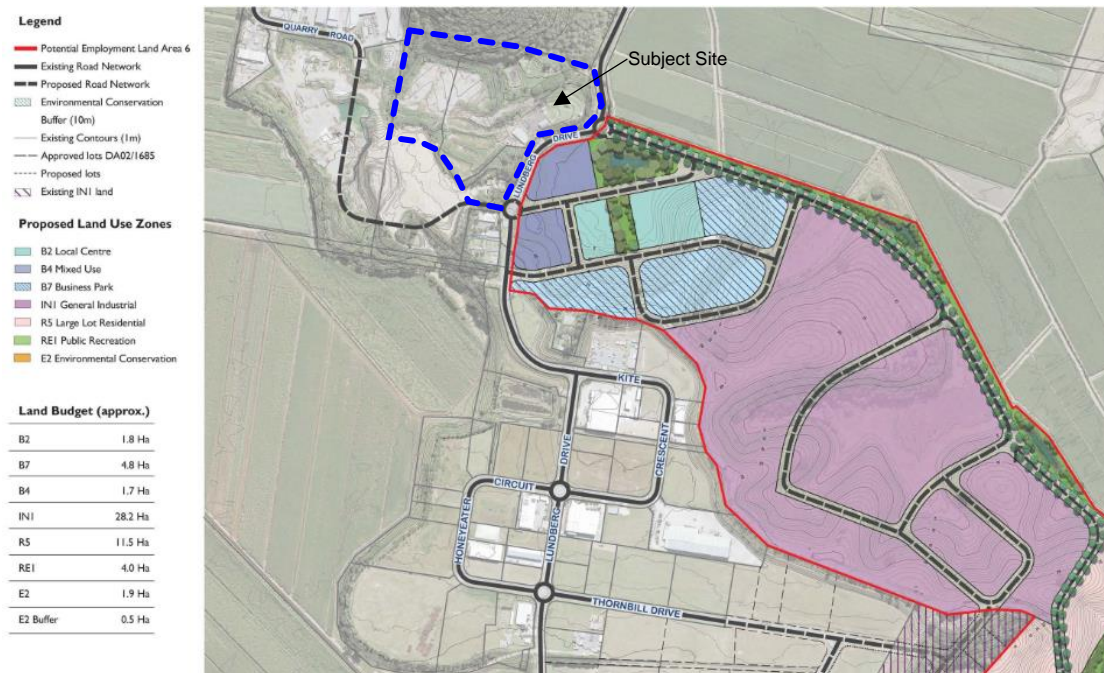


Figure 6 – Planning Proposal Potential Employment Land Area 6
Wardrop Valley, Murwillumbah
Proposed Rezoning

Source – Tweed Shire Council Planning Proposal

1.5 Summary of recommendation

It is recommended that the proposal proceed subject to conditions due to the community benefit and need of such a facility in the Tweed, and as the site is within an already existing and growing industrial area where any potential land use conflicts should be minimal and can be appropriately managed through the development application process.

It is recommended that permitting the use without consent is not supported (and relying on the self-regulating components of Part 5 Infrastructure and Environmental Impact Assessment of the *Environmental Planning and Assessment Act 1979* to ensure no adverse impacts as requested in the proposal) as:

- The development is located in close proximity to private dwellings and has the potential to generate potential amenity impacts that are most appropriately considered and addressed through an open and transparent development application process in which the community can fully participate. This approach is also considered to be more consistent with the intent of Council's Community Engagement and Participation Plan 2019-2024.

This approach would also be consistent with the previous Tweed LEP 2014 Amendment 10 for the same use at Environ.

It is recommended that the proposal should be amended prior to consultation to address this issue.

2. PROPOSAL

2.1 Objectives or intended outcomes

The planning proposal seeks to enable a Council Pound and Rehoming Centre as an additional permitted use at 92 Lundberg Drive, South Murwillumbah.

It is noted that the Standard Instrument LEP does not contain a definition for a Council Pound and Rehoming Centre and the closest definition of 'Community facility' is also not considered adequate by Council.

Council are proposing to use the *Companion Animals Act 1998* definitions:

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 organisation means—

- (a) *a council or any other operator of a council pound, or*
- (b) *the Animal Welfare League NSW, or*
- (c) *The Cat Protection Society of NSW Inc, or*
- (d) *the Royal Society for the Prevention of Cruelty to Animals; New South Wales, or*
- (e) *any other organisation that is, for the time being, designated as a rehoming organisation by the Departmental Chief Executive under section 88B.*

This approach would also be consistent with the previous Tweed LEP 2014 Amendment 10 for the same use at Environ and is therefore considered appropriate.

The proposal adequately outlines the objectives and intended outcomes subject to amendment to require the use with consent. It is also noted that the property description throughout the proposal should be amended from 'part Lot 1 DP232745 and part Lot 2 DP 1139059' to read 'Lot 1 DP232745 and part Lot 2 DP 1139059'.

2.2 Explanation of provisions

It is considered that the proposal adequately outlines the explanation of provisions subject to amendment to require the use with consent.

2.3 Mapping

The proposal contains an aerial image with an outline of the subject site that is considered suitable for public exhibition. An APU Map consistent with the Standard Technical requirements will need to be prepared before the making of the LEP amendment.

3. NEED FOR THE PLANNING PROPOSAL

The proposal is not the result of any strategic study or report.

The need for the proposal has arisen due to Council's decommissioning of their previous facility. Council have now identified the subject site as a potentially suitable site for the replacement facility.

As discussed above, the site is zoned as IN1 General Industrial. There is no Standard Instrument definition for a Council Pound or a Rehoming Facility and therefore the only and most appropriate means of achieving the intended outcome is through a local provision such as an additional permitted use. This is considered appropriate.

4. STRATEGIC ASSESSMENT

4.1 State

The proposal does not contain any matters of state or regional significance and is not inconsistent with the Premier's Priorities.

4.2 Regional / District

The proposal is inconsistent with Direction 2 Enhance biodiversity, coastal and aquatic habitats, and water catchments of the North Coast Regional Plan 2036 as the site contains a small area of potential High Environmental Value (HEV) land (Figure 4). This inconsistency is considered to be of minor significance due to the small area of HEV area on the northern boundary of the site, as the site is already zoned for employment purposes and is in the identified Urban Growth Area under the Regional Plan (Figure 4),

The proposal is also considered to be consistent with the principles of Direction 15 Develop healthy, safe, socially engaged and well connected communities and Direction 21 Coordinate local infrastructure delivery (as Council is providing a community facility and service relating to the care and holding of animals and potential rehoming).

4.3 Local

The proposal is not inconsistent with the Tweed Shire Local Strategic Planning Statement 2020 or the Tweed Community Strategic Plan 2017-2027.

4.4 Section 9.1 Ministerial Directions

The proposal is considered to be consistent with all relevant s9.1 Directions except for the following:

3.5 Development Near Licensed Aerodromes

The planning proposal affects land within about 500m of the Bob Whittle licensed aerodrome. While the aerodrome is a small-scale operation and is unlikely to be impacted by the proposed additional use, consultation with CASA and the lessee of the licensed aerodrome is required by the terms of the Direction. Consistency with this Direction will remain unresolved until consultation has been undertaken.

3.6 Shooting Ranges

The proposal is inconsistent with this Direction as it permits an intensification of land uses adjacent to the Murwillumbah Pistol Club (Figure 7). The inconsistency with this Direction is considered to be of minor significance due to the existing industrial zoning of the land and the nature of the already surrounding land uses.

4.1 Acid Sulfate Soils

The proposal is inconsistent with this Direction as it applies to acid sulfate soils and is not supported by an acid sulphate soils study. As the proposal is recommended to be amended to be permitted with development consent, the provisions of Clause 7.1 of the TLEP 2014 will ensure adequate assessment and appropriate development in relation to this issue. The inconsistency with this Direction is considered to be of minor significance.



Figure 7 – Murwillumbah Pistol Club
Source – NearMap aerial imagery

4.3 Flood Prone Land

The subject site has a small portion of flood prone land (approximately 0.2ha being the most vegetated portion of the site in the north east adjacent the driveway). Council staff advise there is ample flood free, cleared or previously disturbed land available to accommodate the proposed use and flood free access/egress is provided via Lundberg Drive. The inconsistency is therefore considered to be minor significance.

4.4 Planning for Bushfire Protection

The planning proposal effects mapped bushfire prone land and consultation with the NSW Rural Fire Service is required within the terms of the direction. Consistency with this Direction will remain unresolved until consultation has been undertaken and the Secretary's agreement provided.

4.5 State environmental planning policies (SEPPs)

The proposal is considered to be consistent with all applicable SEPPs.

5. SITE-SPECIFIC ASSESSMENT

5.1 Social

The proposal will help enable a pound and rehoming centre for animals within the Tweed LGA which will provide positive social effects by way of humanly caring for and managing animals and providing a service of allowing residents access to animals for rehoming purposes.

No adverse heritage or Aboriginal cultural impact has been identified associated with the proposal, particularly noting that the majority of the site is a former rehabilitated quarry.

5.2 Environmental

The site is bounded by an environmental zone, has a small portion of potential High Environmental Value land and is also identified on the Koala Site Investigation Area map (Figures 3 and 4).

No adverse environmental or biodiversity impacts are anticipated that could not be considered and appropriately addressed at development application stage, particularly noting the majority of the site is a former quarry and has been cleared.

Potential adverse amenity effects could occur associated to noise from barking dogs and potential air quality issues due to possible odours. The incidental activities of animal recreation and walking could also see the potential of escaping of animals and therefore any further threats to any wildlife in the adjacent identified Koala area / environmental zone. The closest house is approximately 200m away. It is considered that these issues can however be considered and appropriately addressed at development application stage in consultation with the community.

5.3 Economic

The proposal is likely to have positive economic impacts due to the employment opportunities from the development of a pound/rehoming service. The proposal will not negatively impact upon other employment centres as there is no other pound within the LGA. There will be economic impacts to Council when developing the site as the majority of the site has been rehabilitated from a former quarry, so will require sewerage, water and electricity connections.

6. CONSULTATION

6.1 Community

Council has advised that it intends to exhibit the proposal for a period of not less than 28 days. Council has also advised that all relevant documents will be on Council's website and administration offices. Council's Community Engagement and Participation Plan also outlines further their notification process. This is considered appropriate.

6.2 Agencies

It is considered that Council should consult with:

- NSW Rural Fire Service
- Civil Aviation Safety Authority
- Bob Whittle Airfield lessee / operator

7. TIME FRAME

The planning proposal includes a project timeline which estimates completion of the LEP amendment in 12 months. This is considered an appropriate time frame for completion of the LEP amendment.

8. LOCAL PLAN-MAKING AUTHORITY

Council has not requested that it be issued with an authorisation to exercise plan making functions. As the proposal deals only with matters of local significance it is considered appropriate that Council be provided authorisation to act as the local plan-making authority.

9. CONCLUSION

It is recommended that the proposal proceed subject to conditions due to the community benefit and need of such a facility in the Tweed, and as the site is within an already existing and growing industrial area where any potential land use conflicts should be minimal and can be appropriately managed through the development application process.

It is recommended that permitting the use without consent is not supported (and relying on the self-regulating components of Part 5 Infrastructure and Environmental Impact Assessment of the *Environmental Planning and Assessment Act 1979* to ensure no adverse impacts as requested in the proposal) as:

- The development is located in close proximity to private dwellings and has the potential to generate potential amenity impacts that are most appropriately considered and addressed through an open and transparent development application process in which the community can fully participate. This approach is also considered to be more consistent with the intent of Council's Community Engagement and Participation Plan 2019-2024.

This approach would also be consistent with the previous Tweed LEP 2014 Amendment 10 for the same use at Environ.

10. RECOMMENDATION

It is recommended that the Director, as delegate of the Secretary:



1. **agree** that any inconsistency with section 9.1 Directions 2.6 Remediation of Contaminated Land, 3.6 Shooting Ranges, 4.1 Acid Sulfate Soils, and 4.3 Flood Prone Land is justified in accordance with the terms of the Directions; and
2. **note** that the inconsistency with section 9.1 Directions 3.5 Development Near Regulated Airports and Defence Airfields and 4.4 Planning for Bushfire Protection remains unresolved until further justification has been provided.

It is recommended that the Director, as delegate of the Minister:

1. **note** the planning proposal (**Attachment A**);
2. **determine** that the planning proposal should proceed subject to the following conditions:
 1. The planning proposal should be made available for community consultation for a minimum of 28 days.

2. Consultation is required with the following public authorities:
 - NSW Rural Fire Service
 - Civil Aviation Safety Authority
 - Bob Whittle Airfield lessee / operator
 3. The time frame for completing the LEP is to be 12 months from the date of the Gateway determination.
 4. Given the nature of the planning proposal, Council should be the local plan-making authority to make this plan.
 5. Prior to agency or community consultation the proposal is to be amended to:
 - amend the property description throughout the proposal from 'part Lot 1 DP232745 and part Lot 2 DP 1139059' to read 'Lot 1 DP232745 and part Lot 2 DP 1139059';
 - amend all references to 'permitted without consent' to read 'permitted with consent'; and
 - remove all references to assessment under Part 5 of the *Environmental Planning and Assessment Act 1979*.
3. **sign** the Gateway determination (**Attachment B**) noting that Tweed Shire Council is the local plan-making authority and the letter to Council (**Attachment C**).

Approval

 <p>Craig Diss Manager, Local and Regional Planning, Northern</p> <p>Date: 3/11/20</p>	 <p>Jeremy Gray Director, Northern Region Local and Regional Planning</p> <p>Date: 5/11/2020</p>
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Assessment officer: Helen Willis
 Admin Para Planner, Northern
 Phone: 5778 1489

Attachments

Attachment	Title
A	Planning proposal
B	Gateway determination
C	Letter to Council