**Planning Proposal  
to include “Environmentally sensitive area” clause to the Tweed LEP 2014 (PP20/0001)**

**Version 1 for Gateway Determination**

**July 2020**

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# Part 1 Objectives and intended outcomes

## Introduction

In July 2018 Tweed Shire Council adopted the Aboriginal Cultural Heritage Management Plan (ACHMP).

The ACHMP provides a framework to assist property owners and developers understand the potential for Aboriginal cultural heritage (ACH) within the Tweed shire and outlines the appropriate steps required to avoid harm to ACH in accordance with the current legislation.

Importantly the ACHMP includes statements of commitment by Tweed Shire Council, the Tweed Byron Local Aboriginal Land Council (TBLALC) and the Tweed Byron Aboriginal Advisory Committee to recognise the traditional custodians of the land, acknowledge the Aboriginal people are the primary determinants of the cultural significance of their heritage and to work collaboratively to promote the awareness and protection of ACH in the Tweed.

The ACHMP represents a best practice approach to the management of ACH and is largely consistent with the draft Aboriginal cultural heritage reforms. The ACHMP uses a landscape-based mapping methodology to the identification and management of ACH and places consultation with the Aboriginal community through the TBLALC upfront in the development process.

The development of the ACHMP resulted in shire wide mapping comprising two layers: *Aboriginal Place of Heritage Significance* (known ACH) and Predictive Aboriginal cultural heritage. In tandem with the mapping is the management plan, which outlines the consultation and assessment requirements, based on the mapping layers and the potential risk of harm.

The known areas of ACH have been identified as *Aboriginal Place of Heritage Significance* as this is consistent with the definition with the Tweed Local Environmental Plan (LEP) 2014 and as such triggers the ACH assessment and referral requirements under Clause 5.10 of the LEP.

The development of the ACHMP identified the need to create a clearer line of sight between the requirements of the management plan, the LEP and the application of State Environmental Planning Policies as they apply to the mapped ACH areas and to meet the requirements of the *National Parks and Wildlife Act, 1974* (NPW Act).

The NPW Act, Part 6, provides specific protection for Aboriginal objects and places by making it an offense to ‘harm’ them. Harm includes ‘destroy, deface or damage of an Aboriginal object or Aboriginal Place, and in relation to an object, move the object from the land on which it has been situated’. It is an offence to harm an Aboriginal object or place under s86 of the NPW Act.

The Standard LEP uses the definition of *Aboriginal Place of Heritage Significance (*as follows) to identify those areas of cultural significance and risk of harm.

***Aboriginal place of heritage significance*** *means an area of land, the general location of which is identified in an Aboriginal heritage study adopted by the Council after public exhibition and that may be shown on the Heritage Map, that is—*

*(a) the site of one or more Aboriginal objects or a place that has the physical remains of pre-European occupation by, or is of contemporary significance to, the Aboriginal people. It may (but need not) include items and remnants of the occupation of the land by Aboriginal people, such as burial places, engraving sites, rock art, midden deposits, scarred and sacred trees and sharpening grooves, or*

*(b) a natural Aboriginal sacred site or other sacred feature. It includes natural features such as creeks or mountains of long-standing cultural significance, as well as initiation, ceremonial or story places or areas of more contemporary cultural significance.*

*Note. The term may include (but is not limited to) places that are declared under section 84 of the National Parks and Wildlife Act 1974 to be Aboriginal places for the purposes of that Act.*

In general a wide range of State Environmental Planning Policies (SEPPs), including the *SEPP (Exempt and Complying Development), SEPP (Infrastructure), SEPP (Mining)* amongst others, identify and manage the potential risk of harm to ACH through the definition of *environmentally sensitive area* (as follows) which in section (g) refers to land **identified in an environmental planning instrument** as being of “***high Aboriginal cultural significance***” (emphasis added).

***environmentally sensitive area****means any of the following—*

*(a)  the coastal waters of the State,*

*(b)  a coastal lake identified in Schedule 1 to*[*State Environmental Planning Policy (Coastal Management) 2018*](https://www.legislation.nsw.gov.au/#/view/EPI/2018/106)*,*

*(c)  land identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map (within the meaning of*[*State Environmental Planning Policy (Coastal Management) 2018*](https://www.legislation.nsw.gov.au/#/view/EPI/2018/106)*),*

*(d)  land reserved as an aquatic reserve under the*[*Fisheries Management Act 1994*](https://www.legislation.nsw.gov.au/#/view/act/1994/38)*or as a marine park under the*[*Marine Parks Act 1997*](https://www.legislation.nsw.gov.au/#/view/act/1997/64)*,*

*(e)  land within a wetland of international significance declared under the Ramsar Convention on Wetlands or within a World heritage area declared under the World Heritage Convention,*

*(f)   land within 100m of land to which paragraph (c), (d) or (e) applies,*

***(g)  land identified in this or any other environmental planning instrument as being of high Aboriginal cultural significance*** *or high biodiversity significance,*

*(h)  land reserved under the*[*National Parks and Wildlife Act 1974*](https://www.legislation.nsw.gov.au/#/view/act/1974/80)*or land to which Part 11 of that Act applies,*

*(i)  land reserved or dedicated under the*[*Crown Land Management Act 2016*](https://www.legislation.nsw.gov.au/#/view/act/2016/58)*for the preservation of flora, fauna, geological formations or for other environmental protection purposes,*

*(j)  land identified as being critical habitat under the*[*Threatened Species Conservation Act 1995*](https://www.legislation.nsw.gov.au/#/view/act/1995/101)*or Part 7A of the*[*Fisheries Management Act 1994*](https://www.legislation.nsw.gov.au/#/view/act/1994/38)*.*

This same terminology is used in Part 3,3 of the applicable LEP as follows:

***3.3 Environmentally sensitive areas excluded***

*(1) Exempt or complying development must not be carried out on any environmentally sensitive area for exempt or complying development.*

*(2) For the purposes of this clause—*

*environmentally sensitive area for exempt or complying development means any of the following—*

*(a) the coastal waters of the State,*

*(b) a coastal lake,*

*(c) land within the coastal wetlands and littoral rainforests area (within the meaning of the Coastal Management Act 2016),*

*(d) land reserved as an aquatic reserve under the Fisheries Management Act 1994 or as a marine park under the Marine Parks Act 1997,*

*(e) land within a wetland of international significance declared under the Ramsar Convention on Wetlands or within a World heritage area declared under the World Heritage Convention,*

*(f) land within 100 metres of land to which paragraph (c), (d) or (e) applies,*

*(g)* ***land identified in this or any other environmental planning instrument as being of high Aboriginal cultural significance*** *or high biodiversity significance,*

*(h) land reserved under the National Parks and Wildlife Act 1974 or land acquired under Part 11 of that Act,*

*(i) land reserved or dedicated under the Crown Land Management Act 2016 for the preservation of flora, fauna, geological formations or for other environmental protection purposes,*

*(j) land that is a declared area of outstanding biodiversity value under the Biodiversity Conservation Act 2016 or declared critical habitat under Part 7A of the Fisheries Management Act 1994,*

The SEPP (Exempt and Complying Development), as one example, facilitates a range of minor development as “exempt” from development consent and a range of low impact development as “complying”, under a Code based consent process. Aboriginal cultural heritage is not separately defined within the Code SEPP, however, is encompassed under the umbrella term of “*environmentally sensitive area*” as being of “*high Aboriginal cultural significance*” (section 1.5 (g)).

Equally, *high Aboriginal cultural significance* is not defined within the SEPP. The intent and role of the ACHMP is to ensure the appropriate consultation and level of assessment as part of development, and to this effect draws the conclusion and interpretation that land mapped as *Aboriginal Place of Heritage Significance* represents land of *high Aboriginal cultural significance* given that these mapped areas comprise known Aboriginal cultural heritage.

Essentially the two definitions applicable to the understanding of land of ACH significance within the e LEP and the SEPP do not directly “speak” to each other as they use *Aboriginal Place of Heritage Significance* in the LEP and *high Aboriginal cultural significance* in the definition of *environmentally sensitive area* in the LEP and the SEPPs.

This planning proposal specifically addresses the land mapped *Aboriginal Place of Heritage Significance.* This planning proposal seeks to create this clear line of sight to minimise the risk of harm to Aboriginal cultural heritage by ensuring the appropriate level of consultation and assessment for development on land mapped as *Aboriginal Place of Heritage Significance.*

This planning proposal is supported by the resolution of Council at the meeting of 5 July 2018, as follows

* + - 1. *Adopts the final Aboriginal Cultural Heritage Management Plan 2018, amended as discussed within this report and provided in Attachment 2, noting and including the recommended actions within Section B6 and the exhibited mapping;*
      2. *Commences a Planning Proposal to amend the Tweed City Centre Local Environment Plan 2012 and the Tweed Local Environmental Plan 2014 to incorporate the amendments as discussed in this report and within the Aboriginal Cultural Heritage Management Plan 2018;*
      3. *Investigates the potential to amend the Tweed Local Environmental Plan 2000 to incorporate the amendments as discussed in this report and within the Aboriginal Cultural Heritage Management Plan 2018;*
      4. *Repeals the Cobaki Terranora Broadwater Aboriginal Cultural Heritage Management Plan 2006 upon adoption of the Aboriginal Cultural Heritage Management Plan (ACHMP) 2018;*
      5. *Provides public notice of the adoption of the Aboriginal Cultural Heritage Management Plan 2018 and the repeal of the Cobaki Terranora Broadwater Aboriginal Cultural Heritage Management Plan 2006; and*
      6. *Holds a workshop with the Tweed community and invites the Tweed Byron Local Aboriginal Land Council to the workshop.*

## Objectives and Intended Outcomes

The objective of the planning proposal is to create a clear line of sight between the definitions and terminology of *high Aboriginal cultural significance, Aboriginal place of heritage significance* and *Environmentally sensitive area* which makes it clear that land mapped *Aboriginal place of heritage significance*  in the ACHMP means *high Aboriginal cultural significance* as listed in the definition of *Environmentally sensitive area.*

Ancillary to this objective is to provide clarity to the planning framework for landowners and applicants that;

* Development consent may not be granted on land mapped as *Aboriginal place of heritage significance* (known cultural heritage)within the Tweed ACHMP unless the consent authority is satisfied that the consultation and assessment requirements of the ACHMP have been satisfied, due to the high risk of harm to Aboriginal cultural heritage,.
* Complying development consent may not be granted on land mapped as *Aboriginal place of heritage significance* within the Tweed ACHMP due to the high risk of harm to Aboriginal cultural heritage and through the definition of *Environmentally sensitive area*. This would be effective through Clause 1.17A(1)(e) of the *SEPP* (*Exempt and Complying Development Codes) 2008*. Development consent may be pursued under a development application.
* Exempt development cannot be undertaken on land mapped as *Aboriginal place of heritage significance* within the Tweed ACHMP where the specified exempt development or development standards exclude exempt development where land is an *environmentally sensitive area*, due to the high risk of harm to Aboriginal cultural heritage. Development consent may be pursued under a development application.

It is noted that the ACHMP process for consultation and assessment is the same for land mapped as both *Aboriginal Place of Heritage Significance* (known ACH) and Predictive Aboriginal cultural heritage. The requirements for consideration of ACH are triggered as mandatory under the provisions of LEP Clause 5.10(8) of the LEP for land mapped as *Aboriginal Place of Heritage Significance* (known ACH). However, for land mapped as Predictive Aboriginal cultural heritage the management provisions are a strong recommendation.

It is also noted that the link between *high Aboriginal cultural significance* and *Environmentally sensitive area* will apply only to the mapped *Aboriginal Place of Heritage Significance* (known ACH) and not to the areas of predictive Aboriginal cultural heritage*.*

This amendment to the LEP will in its effect “turn off” complying development where land is mapped as *Aboriginal Place of Heritage Significance* in accordance with this land being an *environmentally sensitive area*. Equally this amendment to the LEP will in its effect “turn off” specified (not all) exempt development where land is mapped as *Aboriginal Place of Heritage Significance* in accordance with this land being an *environmentally sensitive area*.

It is also the intent of the clause to remain open to include other features of the *environmentally sensitive area* definitionas these are developed, such as land of *high biodiversity significance.*

# Part 2 Explanation of provisions

As noted above, Council has adopted the ACHMP with the associated mapping layers of *Aboriginal Place of Heritage Significance* (known ACH) and Predictive Aboriginal cultural heritage.

The decision was intentionally made to not include these mapping layers within the applicable LEP but rather as a part of the ACHMP.

This decision is based on:

* Understanding that the mapping will evolve and the need to be able to quickly update the mapping layers as assessments reveal new items of areas of Aboriginal cultural significance to ensure their identification and protection.
* The understanding that the mapping is the cultural intelligence of the Tweed’s Aboriginal community and that this community are the primary determinants of the cultural significance of their heritage.
* The definition of *Aboriginal Place of heritage significance* which refers to “*land, the general location of which is identified in an Aboriginal heritage study adopted by the Council after public exhibition and that may be shown on the Heritage Map”.*
* Consistent with the Department of Planning, Industry and Environment ( DPIE) *Practice Note PN11-001* 10 March 2011 which clarifies and separates out ‘Aboriginal place of heritage significance’ and ‘Aboriginal object’ from other heritage items that need to be described in Schedule 5. The practice note clarifies the location and nature of ‘Aboriginal objects’ and ‘Aboriginal places of heritage significance’ **may (but need not)** be described in Schedule 5 and shown on the sheet of the Heritage Map marked ‘Aboriginal Heritage Map’.

As such there are no mapping amendments within this planning proposals.

The intent of the planning proposal is to inset a new clause to create a clear line of sight between the definition / terminology of *high Aboriginal cultural significance, Aboriginal place of heritage significance* and *Environmentally sensitive area.*

This clause could be inserted in Part 3 after *Clause 3.3 Environmentally sensitive areas excluded* or within *Part 7 Additional Local Provisions.*

To inform the suitable drafting of the cause, the intention of the Clause is as follows:

1. Include an *Environmentally sensitive area* clause which will contain provisions to clarify that the definition of *environmentally sensitive area* and *high Aboriginal cultural significance* within theTweed LEP 2014 means *Aboriginal place of heritage significance* as mapped in association with the *Tweed ACHMP 2018;*
2. The clause is constructed in a manner to enable inclusion of other criteria, as required, and listed in the definition of *environmentally sensitive area,* for example *high biodiversity significance;*
3. Identify and protect areas of known Aboriginal cultural heritage (mapped as *Aboriginal place of heritage significance)*;
4. Clarify the application of *environmentally sensitive area* as it relates to this and other state environmental planning policies.
5. Clarify that development consent must not be granted for development on land mapped as *Aboriginal Place of heritage significance* unless the consent authority is satisfied that the consultation and assessment requirements, in accordance with the adopted *Tweed Aboriginal Cultural Heritage Management Plan 2018,* have been satisfied.
6. Clarify that complying development will not apply to land mapped as *Aboriginal place of heritage significance* due to it being an *environmentally sensitive area; and*
7. Clarify that exempt development will not apply to land mapped as *Aboriginal place of heritage significance* where the criteria excludes an *environmentally sensitive area;*

# Part 3 Justification

## Section A Need for the planning proposal

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

The planning proposal seeks to effect the recommendations of the Council adopted Tweed Aboriginal Cultural Heritage Management Plan (ACHMP).

The ACHMP identified a number of implications arising from the legislative framework and as such makes recommendations to provide this clear line of sight, as follows:

* *Recommendations 6 Review interaction of the SI LEP provisions with other planning legislation and policy ie CODE SEPP, Infrastructure SEPP and others identified in Parts C and D.*
* *Recommendations 7 Liaise with the State Government agencies for the standardisation of Aboriginal definitions across the suite of SEPPs and other relevant Planning Policy as identified in Parts C and D.*
* *Recommendation 12 Amendment to the Tweed LEPs under the SI LEP template (Tweed LEP 2014 and the Tweed City Centre LEP 2012) to effect th Management plan actions and recommendations.*

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

Yes, a planning proposal currently is the best means to achieve the line of sight between the various planning legislation and definitions. The definition of the *environmentally sensitive area* points specifically to “*land identified in this or any other environmental planning instrument”* thereby placing the onus on the LEP to articulate for the Tweed LGA what is considered to be an *environmentally sensitive area.*

## Section B Relationship to strategic planning framework

### Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?

The planning proposal is consistent with the *North Coast Regional Plan 2036 Direction 18 to Respect and protect the North Coast’s Aboriginal Heritage* and the four Actions that fall under this Direction, as follows:

*18.1 Ensure Aboriginal objects and places are protected, managed and respected in accordance with legislative requirements and the wishes of local Aboriginal communities.*

*18.2 Undertake Aboriginal cultural heritage assessments to inform the design of planning and development proposals so that impacts to Aboriginal cultural heritage are minimised and appropriate heritage management mechanisms are identified.*

*18.3 Develop local heritage studies in consultation with the local Aboriginal community, and adopt appropriate measures in planning strategies and local plans to protect Aboriginal heritage.*

*18.4 Prepare maps to identify sites of Aboriginal heritage in ‘investigation’ areas, where culturally appropriate, to inform planning strategies and local plans to protect Aboriginal heritage.*

### Is the planning proposal consistent with the local Council’s Community Strategic Plan, or other local strategic plan?

The planning proposal is consistent with the Tweed Local Strategic Planning Statement:

* *Planning priority 12 Foster enhanced partnerships and collaboration with local Aboriginal and Torres Strait Islander communities* under the Liveable Communities theme. In particular *Action 12.2 Involve the Tweed Aboriginal and Torres Strait Islander communities early in land-use planning*
* *Planning Priority* *13. Promote the respect, protection and management of Aboriginal cultural heritage and historic heritage* under the Liveable Communities theme. In particular *Action 13.6 Amend the LEPs to define ‘Aboriginal place of heritage significance’, as an environmentally sensitive area, as defined under State Environmental Planning Policy (Exempt and Complying Development Codes) 2008;* and *Action 13.1 Promote awareness of, and respect for, Aboriginal cultural heritage through best practice in the assessment and management of Aboriginal cultural heritage and the achievement of quality heritage outcomes, in consultation with the Aboriginal community*

### Is the planning proposal consistent with the applicable State Environmental Planning Policies (SEPPs)?

The planning proposal is consistent with other state planning policies (SEPPs) as the definition of *environmentally sensitive area* appears in a wide number of SEPP and this definition points specifically to specifically to “*land identified in this or any other environmental planning instrument”* thereby placing the onus on the LEP to articulate for the Tweed LGA what is considered to be an *environmentally sensitive area.*

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

The planning proposal is consistent with the Ministerial s9.1 Directions, as outlined in Table 1.

| *Table 1- Consistency with s9.1 Directions* | | | |
| --- | --- | --- | --- |
| **S9.1 Direction** | **Application** | **Relevance to this planning proposal** | **Consistency with direction** |
| [**1. Employment and Resources**](#_Toc229304430) | | | |
| 1.1 Business and Industrial Zones | Summary of Objectives  To protect, encourage and support employment / strategic centres.  Application  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). | This planning proposal does not alter any business zoning or permissibility, rather it requires consideration of ACH matters as an early part of development. | Consistent. |
| 1.2 Rural Zones | Objectives:  The objective of this direction is to protect the agricultural production value of rural land.  Application:  A planning proposal must:  (a) not rezone land from a rural zone to a residential, business, industrial, village or tourist zone.  (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). | This planning proposal does not alter any rural zoning or permissibility, rather it requires consideration of ACH matters as an early part of development. | Consistent. |
| [1.3 Mining, Petroleum Production and Extractive Industries](#_Toc229304433) | Objectives:  The future extraction of State or regionally significant reserves of coal, other minerals, petroleum and extractive materials is not compromised by inappropriate development.  Application:  When a relevant planning authority prepares a planning proposal that would have the effect of:  (a)prohibiting the mining of coal or other minerals, production of petroleum, or winning or obtaining of extractive materials, or  (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. | This planning proposal does not include provisions that would trigger the application of this direction, rather it requires consideration of ACH matters as an early part of development. | Consistent. |
| 1.4 Oyster Aquaculture | Objectives:  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.  Application:  When there is a change in land use that could result with adverse impact or incompatibility of land uses. | This planning proposal does not include provisions that would trigger the application of this direction, rather it requires consideration of ACH matters as an early part of development. | Consistent. |
| [1.5 Rural Lands](#_Toc229304435) | Objectives: 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.  Applies when:  (a)a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed rural or environment protection zone, or  (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. | This planning proposal does not alter rural or environmental zones, rather it requires consideration of ACH matters as an early part of development. | Consistent. |
| [**2. Environment and Heritage**](#_Toc229304436) | | | |
| [2.1 Environment Protection Zones](#_Toc229304437) | Objective  To protect and conserve environmentally sensitive areas.  Application  When a relevant planning authority prepares a planning proposal. | This planning proposal seeks specifically to identify and protect environmentally sensitive areas. | Consistent. |
| [2.2 Coastal Protection](#_Toc229304438) | Objective  To implement the principles in the NSW Coastal Policy.  Application  When a relevant planning authority prepares a planning proposal that applies to land in the coastal zone. | This planning proposal does not alter change the principles of the coastal zone, rather it requires consideration of ACH matters as an early part of development. | Consistent. |
| [2.3 Heritage Conservation](#_Toc229304439) | Objective  To conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.  Application  When a relevant planning authority prepares a planning proposal. | This planning proposal seeks specifically to support the identification and protection objects and places of Aboriginal cultural significance. | Consistent. |
| [2.4 Recreation Vehicle Areas](#_Toc229304440) | Objective  To protect sensitive land or land with significant conservation values from adverse impacts from recreation vehicles.  Application  When a relevant planning authority prepares a planning proposal. | This planning proposal does not seek to change the regulation of recreation vehicles or land on which a recreation vehicle access or development may occur, rather it requires consideration of ACH matters as an early part of development. | Consistent. |
| 2.5 Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs | Objective:  To ensure that a balanced and consistent approach is taken when applying environmental protection zones and overlays to land on the NSW Far North Coast.  Application:  When a relevant planning authority prepares a planning proposal that introduces or alters an E2 or E3 zone, or an overlay with associated clause.  A relevant planning authority must apply the proposed E2, E3 or the overlay and associated clause consistent with the Northern Councils E Zone Review Final Recommendations. | The subject land does not alter any environment protection zone. | Not applicable. |
| 2.6 Remediation of contaminated land | Summary of objectives  The objective of this direction is to reduce the risk of harm to human health and the environment by  ensuring that contamination and remediation are considered by planning proposal authorities.  Application  When a planning proposal includes a zone that would permit a change of use of the land, Council must:   * Consider any contamination of land * Be satisfied that the land is or will be suitably remediated for the proposed uses of that land | This planning proposal does not alter or affect any contaminated land. | Not applicable. |
| [**3. Housing, Infrastructure and Urban Development**](#_Toc229304441) | | | |
| [3.1 Residential Zones](#_Toc229304442) | Summary of Objectives:  (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.  Application  When a planning proposal affects land within:  (a) an existing or proposed residential zone, or  (b) any other zone in which significant residential development is permitted or proposed to be permitted. | This planning proposal does not alter any residential zoning or permissibility, rather it requires consideration of ACH matters as an early part of development. | Consistent. |
| [3.2 Caravan Parks and Manufactured Home Estates](#_Toc229304443) | Objectives:  (a) to provide for a variety of housing types, and  (b) provide opportunities for caravan parks and manufactured home estates.  Application:  When a relevant planning authority prepares a planning proposal. | This planning proposal does not alter any caravan park or manufactured home permissibility, rather it requires consideration of ACH matters as an early part of development. | Consistent. |
| [3.3 Home Occupations](#_Toc229304444) | Objective:  To encourage the carrying out of low-impact small businesses in dwelling houses.  Application:  When a relevant planning authority prepares a planning proposal.  If this direction applies:  Planning proposals must permit home occupations to be carried out in dwelling houses without the need for development consent | This planning proposal does not alter any home occupation permissibility, rather it requires consideration of ACH matters as an early part of development. | Consistent. |
| [3.4 Integrating Land Use and Transport](#_Toc229304445) | Summary of Objectives:  To ensure that urban structures, building forms, land use, subdivision and street layouts achieve the following objectives:  (a) improving access to housing, jobs and services by walking, cycling and public transport, and  (b) increasing the choice of available transport and reducing dependence on cars, and  (c) reducing travel demand including the number of trips generated by development and the distances travelled,  (d) supporting the efficient operation of public transport services, and  (e) providing for the efficient movement of freight.  Application:  This direction applies when a relevant planning authority prepares a planning proposal that will create, alter or remove a zone or a provision relating to urban land. | This planning proposal does not alter any integration of land us and transport or urban land, rather it requires consideration of ACH matters as an early part of development. | Consistent. |
| 3.5 Development Near Licensed Aerodrome | Summary of Objectives:  (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.  Application:  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.  What must be done  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. | This planning proposal does not alter any aircraft operations, rather it requires consideration of ACH matters as an early part of development. | Consistent. |
| 3.6 Shooting Ranges | Objectives:  (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.  Application:  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.  What must not be done  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. | This planning proposal does not alter any shooting range permissibility, rather it requires consideration of ACH matters as an early part of development. | Consistent. |
| 3.7 Reduction in non-hosted short term rental accommodation period | Applies to Byron local government area. | Not relevant to this planning proposal. | Not applicable. |
| [**4. Hazard and Risk**](#_Toc229304447) | | | |
| [4.1 Acid Sulfate Soils](#_Toc229304448) | Objective  To avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulfate soils.  Application:  When a relevant planning authority prepares a planning proposal that will apply to land having a probability of containing acid sulfate soils. | This planning proposal does not alter any acid sulphate soils. | Not applicable. |
| [4.2 Mine Subsidence and Unstable Land](#_Toc229304449) | To prevent damage to life, property and the environment on land unstable or potentially subject to mine subsidence.  Application:  When a relevant planning authority prepares a planning proposal that permits development on land that is within a mine subsidence district, or has been identified as unstable in a study, strategy or other assessment. | This planning proposal does not alter/impact any mine subsidence or unstable land. | Not applicable. |
| [4.3 Flood Prone Land](#_Toc229304450) | 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. | This planning proposal does not alter/impact any flood prone land. | Not applicable. |
| [4.4 Planning for Bushfire Protection](#_Toc229304451) | Objective  (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  (b) to encourage management of bush fire prone areas.  Application:  When a relevant planning authority prepares a planning proposal that will affect, or is in proximity to land mapped as bushfire prone land. | This planning proposal does not alter/impact any bushfire prone land. | Not applicable. |
| [**5. Regional Planning**](#_Toc229304452) | | | |
| [5.1 Implementation of Regional Strategies](#_Toc229304453) | Objective  To give legal effect to the vision, land use strategy, policies, outcomes and actions contained in regional strategies.  Application:  When a relevant planning authority prepares a planning proposal. | Consistency of this planning proposal with the specific Aboriginal cultural heritage directions of the North Coast Regional Plan, 2036 has been demonstrated in Section B1 of this report. | Consistent. |
| 5.2 Sydney Drinking Water Catchments | Local government areas not including Tweed. | Not relevant. | Not applicable. |
| [5.3 Farmland of State and Regional Significance on the NSW Far North Coast](#_Toc229304455) | Objective  (a) to ensure that the best agricultural land will be available for current and future generations to grow food and fibre,  (b) to provide more certainty on the status of the best agricultural land, and  (c) to reduce land use conflict.  Application:  When a relevant planning authority prepares a planning proposal for land mapped as: State significant farmland, 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. | This planning proposal does not alter state or farmland, rather it requires consideration of ACH matters as an early part of development. | Consistent. |
| 5.4 Commercial and Retail Development along the Pacific Hwy, North Coast | Objective  To manage commercial and retail development along the Pacific Highway to preserve and protect the safe function of the highway and its users.  Application:  When a relevant planning authority prepares a planning proposal for land in the vicinity of the existing and/or proposed alignment of the Pacific Highway. | This planning proposal does not alter or impact commercial or retail development along the Pacific Highway, rather it requires consideration of ACH matters as an early part of development. | Consistent. |
| 5.8 Second Sydney Airport: Badgerys Creek | Applies to other local government areas than Tweed. | Not relevant to this planning proposal. | Not applicable. |
| 5.9 North West Rail Link Corridor Strategy | Applies to other local government areas than Tweed. | Not relevant to this planning proposal. | Not applicable. |
| 5.10 Implementation of Regional Plans | Objective  To give legal effect to the vision, land use strategy, goals, directions and actions contained in Regional Plans.  Applies when preparing a planning proposal. | Consistency of this planning proposal with the specific Aboriginal cultural heritage directions of the North Coast Regional Plan, 2036 has been demonstrated in Section B1 of this report. | Consistent. |
| 5.11 Development of Aboriginal Land Council Land | Objective  To provide for the consideration of development delivery plans prepared under State Environmental Planning Policy (Aboriginal Land) 2019.  Application: When a relevant planning authority prepares a planning proposal for land shown on the Land Application Map of State Environmental Planning Policy (Aboriginal Land) 2019. | This planning proposal does not alter or impact Aboriginal Land Council land, rather it requires consideration of ACH matters as an early part of development and supports the protection and appropriate management of Aboriginal cultural heritage | Consistent. |
| [**6.Local Plan Making**](#_Toc229304461) | | | |
| 6.1 Approval and Referral Requirements | Objective  To ensure that LEP provisions encourage the efficient and appropriate assessment of development.  Application: When a relevant planning authority prepares a planning proposal.  What must be done: Ensure provisions minimise concurrence roles, consultation or referral of DAs to public authority. | This planning proposal does not propose an amendment of the kind referred to in the Direction. | Consistent. |
| 6.2 Reserving Land for Public Purposes | Objective  (a) to facilitate the provision of public services and facilities by reserving land for public purposes, and  (b) to facilitate the removal of reservations of land for public purposes where the land is no longer required for acquisition. | This planning proposal does not create, reduce or alter existing zoned reserves, and is not the subject of a direction of the Minister or public authority for that purpose. | Not applicable. |
| [6.3 Site Specific Provisions](#_Toc229304464) | Objective  To discourage unnecessarily restrictive site specific planning controls.  Application: When a relevant planning authority prepares a planning proposal that will allow a particular development. | This planning proposal does seek to alter the application of some exempt and complying development where there is the potential risk of harm to Aboriginal cultural heritage on land identified as *Aboriginal Place of Heritage Significance* through identifying this land as *environmentally sensitive area.*  This approach is supported by the Tweed Aboriginal Cultural Heritage Management Plan 2018 and the range of local and state policy as outlined in Part 3 above. | Consistent with item (6) as the planning proposal is consistent with local and regional policy regarding protection and management of Aboriginal cultural heritage. |
| **7. Metropolitan Planning** | | | |
| 7.1 Implementation of A Plan for Growing Sydney | Applies to local government areas other than Tweed. | Not relevant to this planning proposal. | Not applicable. |
| 7.2 Implementation of Greater Macarthur Land Release Investigation | Applies to local government areas other than Tweed. | Not relevant to this planning proposal. | Not applicable. |
| 7.3 Parramatta Road Corridor Urban Transformation Strategy | Applies to local government areas other than Tweed. | Not relevant to this planning proposal. | Not applicable. |
| 7.4 Implementation of North West Priority Growth Area Land Use and Infrastructure Implementation Plan | Applies to local government areas other than Tweed. | Not relevant to this planning proposal. | Not applicable. |
| 7.5 Implementation of Greater Parramatta Priority Growth Area Interim Land Use and Infrastructure Implementation Plan | Applies to local government areas other than Tweed. | Not relevant to this planning proposal. | Not applicable. |
| 7.6 Implementation of Wilton Priority Growth Area Interim Land Use and Infrastructure Implementation Plan | Applies to local government areas other than Tweed. | Not relevant to this planning proposal. | Not applicable. |
| 7.7 Implementation of Glenfield to Macarthur Urban Renewal Corridor | Applies to local government areas other than Tweed. | Not relevant to this planning proposal. | Not applicable. |
| 7.8 Implementation of Western Sydney Aerotropolis Interim Land Use and Infrastructure Implementation Plan | Applies to local government areas other than Tweed. | Not relevant to this planning proposal. | Not applicable. |
| 7.9 Implementation of Bayside West Precincts 2036 Plan | Applies to local government areas other than Tweed. | Not relevant to this planning proposal. | Not applicable. |
| 7.10 Implementation of Planning Principles for the Cooks Cove Precinct | Applies to local government areas other than Tweed. | Not relevant to this planning proposal. | Not applicable. |

## Section C Environmental, Social and Economic Impact

### 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?

This planning proposal does not impact any critical habitat, ecological communities or threatened species.

It does seek to clarify the application of the definition of *environmentally sensitive area* for the purpose of *high Aboriginal significance.*

The planning proposal seeks to have a clause prepared for the LEP that addresses *environmentally sensitive area* holisticallyand can therefore be expanded to address other criteria included in the *environmentally sensitive area* definition, such as high biodiversity significance.

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

There are no likely environmental effects as a result of this planning proposal.

### How has the planning proposal adequately addressed any social and economic effects?

The Tweed ACMP 2018 was widely consulted on during its development and exhibition. The ACHMP has now been in place and effective for some 12-18 months. The Tweed community have largely been accepting of the Aboriginal consultation as an integral part of the development process and are largely following the plans recommendations, including acceptance of the small consultation costs and the potential changes to the application of exempt and complying development.

This planning proposal seeks to provide clarity and a line of sight between the LEP and the various SEPPs to minimise the risk of harm to Aboriginal cultural heritage by ensuring the appropriate level of consultation and assessment for development on land mapped as Aboriginal Place of Heritage Significance.

## Section D State and Commonwealth interests

### Is there adequate public infrastructure for the planning proposal?

The planning proposal does not create any demand or requirement for public infrastructure.

### What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

A Gateway determination has not yet been issued for this planning proposal. Relevant authorities will be consulted in accordance with the requirements of the Gateway Determination.

The views of consulted public authorities will be summarised and addressed as appropriate in the final Planning Proposal.

# Part 4 Mapping

The Planning Proposal will not require any mapping amendments.

# Part 5 Community consultation

Council will place the Planning Proposal on public exhibition for a period of not less than 28 days and undertake consultation with all stakeholders as directed, in accordance with conditions of the Gateway Determination.

Community consultation will be commenced with placing a public notice in the Tweed Link, the NSW Planning Portal and on the Tweed Shire Council website.

# Part 6 Timeframe

The following project timeline is intended to be a guide only and may be subject to changes in response to the public consultation process and/or community submissions.

|  |  |  |
| --- | --- | --- |
| Task | Timeframe | Completed |
| Referral of the planning proposal for a Gateway determination | July 2020 |  |
| **Gateway Determination** | August 2020 |  |
| Undertake requirements of the Gateway Determination and prepare V2 planning proposal | September 2019 |  |
| Public exhibition | October - November 2020 |  |
| Agency consultation | October - November 2020 |  |
| Review submissions, respond and prepare V3 planning proposal for Council’s consideration | December/January 2020 |  |
| Council report to finalise and refer the plan to the DPE to be made | February 2021 |  |
| Referral of the Plan to the DPE for making | March 2021 |  |
| Plan to be made within 9 months of Gateway Determination | May 2021 |  |

# 

# Summary and conclusions

The objective of the planning proposal is to create a clear line of sight between the definitions and terminology of *high Aboriginal cultural significance, Aboriginal place of heritage significance* and *Environmentally sensitive area.*

The planning proposal is consistent with the recommendations of the Tweed Aboriginal Cultural Heritage Management Plan 2018, local planning policy, the Tweed Local Strategic Planning Statement and the objectives of the North Coast Regional Plan 2036.

The planning proposal to amend the Tweed LEP 2014 is considered to be the most appropriate means to effect the clarification of *Environmentally sensitive area.*