

## Planning Services

### Gateway Determination Report

<b>LGA</b>	Tweed
<b>PPA</b>	Tweed Shire Council
<b>NAME</b>	Facilitate Rail Trail
<b>NUMBER</b>	PP_2018_TWEED_005_00
<b>LEP TO BE AMENDED</b>	Tweed Local Environmental Plan 2014
<b>ADDRESS</b>	Northern Rivers Rail Trail
<b>DESCRIPTION</b>	Railway corridor lots within Tweed LGA
<b>RECEIVED</b>	10/07/2018
<b>FILE NO.</b>	EF18/30087
<b>POLITICAL DONATIONS</b>	There are no donations or gifts to disclose and a political donation disclosure is not required.
<b>LOBBYIST CODE OF CONDUCT</b>	There have been no meetings or communications with registered lobbyists with respect to this proposal.

## INTRODUCTION

### Description of planning proposal

The planning proposal seeks to amend the Tweed Local Environmental Plan (LEP) 2014 to enable the development of the Crabbes Creek to Murwillumbah rail trail, without consent.

### Site description

The proposal applies to:

- part Lot 4738 DP 1231020 (rezoning and bringing into the 2014 LEP); and
- the rail line and corridor from Crabbes Creek through to Murwillumbah within the Tweed LGA (additional permitted use to enable the rail trail)

### Existing planning controls

Lot 4738 DP 1231020 is currently zoned 5(a) (Special Uses: Railway) under the Tweed LEP 2000. It is listed as Deferred Matter under the Tweed LEP 2014. The majority of the rail corridor is zoned RU2 Rural Landscape aligning with the surrounding zone. The corridor within South Murwillumbah is zoned RU1 Primary Production, R2 Low Density Residential and B5 Business Development also aligning with the surrounding zones.

### Surrounding area

The rail corridor meanders through the localities of Crabbes Creek, Mooball, Burringbar, Stokers Siding, Dunbible and South Murwillumbah. The surrounding land

uses within the South Murwillumbah area are low density residential development. The remaining localities surrounding land uses are rural allotments and waterways.

### **Summary of recommendation**

The proposal to rezone part of the rail corridor and facilitate the development of a rail trail within the rail corridor should proceed subject to a number of conditions. The planning proposal is supported as it:

- rezones land to an appropriate rural zone in accordance with the Standard Instrument LEP land use zones;
- enables the development of this section of the rail trail in accordance with the Rail Trail Study (2014); and
- aligns with Council's commitment to its strategic planning framework that promotes tourism, pedestrian movements and alternative transport options in the local area.

## **PROPOSAL**

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### **Objectives or intended outcomes**

The statement of objectives adequately describes the intention of the planning proposal. The proposal seeks to rezone a small section of railway, zoned under the previous planning instrument, and amend Schedule 1 Additional Permitted Uses to enable the development of the rail trail without consent.

### **Explanation of provisions**

The explanation of provisions adequately addresses the intended changes to Tweed LEP 2014. The planning proposal seeks to:

- rezone part of Lot 4738 DP 1231020 from 5(a) (Special Uses: Railway) under Tweed LEP 2000 to RU2 Rural Landscape under Tweed LEP 2014;
- include an additional permitted use in Schedule 1 to facilitate development of a rail trail on certain railway land between Crabbes Creek and Murwillumbah, as permitted without consent.

This will enable the Rail Trail to be assessed under Part 5 of the *Environmental Planning and Assessment Act 1979*.

### **Mapping**

The planning proposal includes current and proposed Land Zoning, Height of Building (HOB) and Minimum Lot Size (MLS) maps and these maps are suitable for exhibition purposes.

An amendment of the Land Application (LAP) map is required as the rezoning involves an area mapped as Deferred Matter. An amendment to the Additional Permitted Uses (APU) maps is also required and the 17 lots (identified in the planning proposal) will be grouped under a single reference. It is recommended that the Gateway determination apply a condition that these maps will be prepared and included in the planning proposal prior to community consultation.

Site maps indicating the lots being considered for the rail trail has been provided and are suitable for exhibition purposes.

Amendments to the Land Zoning, HOB, MLS, LAP and APU maps are to be prepared in accordance with the Standard Technical Requirements for Spatial Datasets and Maps prior to finalisation of the LEP.

## **NEED FOR THE PLANNING PROPOSAL**

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The Casino to Murwillumbah railway has operated since 1894. The service was suspended in 2004. The NSW Government have investigated the best use of the North Coast Rail Trail for a number of years. In 2013 a feasibility study determined that the cost of re-instating the railway line for railway purposes would be over \$900m, ongoing maintenance without re-instatement was on average \$750,000 per year from 2007-2011 making the do nothing option unviable. The study further determined that removal of the line and its reuse as a rail trail was the preferred option for this corridor.

The current zoning does not support the conversion of the railway line to a rail trail. The study noted that LEP amendments would be needed to facilitate this development.

Lot 4738 DP 1231020 is currently zoned 5(a) (Special Uses: Railway) under Tweed LEP 2000. The parcel is currently a deferred matter under Tweed LEP 2014. The land does not have the environmental attributes to warrant an environmental zoning and as such a rural zone is proposed. The RU2 Rural Landscape zone is supported as it aligns with the rural zone applied to the rail corridor in the surrounding area.

The amendment to the instrument, the LZN, HOB, MLS, LAP and APU maps is the most appropriate mechanism to achieve the objectives and intent of the proposal.

## **STRATEGIC ASSESSMENT**

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### **State**

The proposal is consistent with the Transport for NSW Regional Services and Infrastructure Plan as it highlights the commitment by the Government to provide support for the Tweed section of the Northern Rivers Rail Trail.

The planning proposal is consistent with the Casino to Murwillumbah Rail Trail Study as the proposal is implementing the necessary changes to the LEP identified in the study, to enable development of the rail trail.

The Murwillumbah Railway Station and Yard Group are a State listed heritage item. The listing includes that the Murwillumbah station is a good example of a station constructed in the 1920's from precast concrete, the predominant material of the period of which relatively little has survived. A referral to OEH will be required to ensure this matter is adequately considered.

### **Regional**

The proposal is consistent with the North Coast Regional Plan (NCRP) 2036 to provide a thriving interconnected economy by promoting the growth of tourism and vibrant and engaged communities by developing recreational activities that can cross social boundaries. The proposal delivers on these directions by providing enhanced walking and cycling trails as tourism focused opportunities and promoting nature based tourism. The rail trail is directly identified in the NCRP. The proposal delivers on the identified need of 'reusing part of the Casino to Murwillumbah rail line to support nature based tourism and recreation'. Making the LEP changes to facilitate

rail trail activities as permissible without consent allows for the proposal to be consistent with the Plan.

## **Local**

The planning proposal is not inconsistent with Council's Community Strategic Plan 2017-2027 and the strategy's key themes are directly relevant to the intended outcomes of the planning proposal which include, increasing tourist numbers, providing alternative transport options and facilities for recreational pursuits for local and visitors.

## **Section 9.1 Ministerial Directions**

The following Section 9.1 Directions are relevant to the planning proposal

1.2 Rural Zones, 1.3 Mining Production and Extractive Industries, 1.5 Rural Lands, 2.2 Coastal Protection, 2.3 Heritage Conservation, 2.5 Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEP's, 3.2 Caravan Parks and Manufactured Home Estates, 3.3 Home Occupations, 4.1 Acid Sulfate Soils, 4.3 Flood Prone Land, 4.4 Planning for Bushfire Protection, 5.3 Farmland of State and Regional Significance on the NSW Far North Coast, 5.10 Implementation of Regional Plans, 6.1 Approval and Referral Requirements, 6.2 Reserving Land for Public Purposes and 6.3 Site Specific Provisions.

Of these, the proposal is considered to be inconsistent with directions 2.2 Coastal Protection, 2.3 Heritage Protection, 4.1 Acid Sulfate Soils, 4.3 Flood Prone Land, 4.4 Planning for Bushfire Protection and 6.3 Site Specific Provisions.

### 1.5 Rural Lands

1.5 Rural Lands is relevant to the planning proposal. This direction provides that a planning proposal which affects land within an existing or proposed rural or environmental protection zone must be consistent with the Rural Planning and Subdivision Principles. This proposal is not inconsistent with the rural planning principles as the land has been used as a train line for over 100 years, and this proposal does not detract from the lands rural use any further.

### 2.2 Coastal Protection

Direction 2.2 Coastal Protection is relevant to the planning proposal. The direction provides that a planning proposal must contain provisions which give effect to NSW Coastal policies. The proposal for the rail trail is seeking to permit this type of development without consent. The assessment under Part 5 should give consideration to coastal processes where required. The scale of development of the rail trail is also expected to be low impact. The inconsistency with this direction can be justified as being of minor significance.

## 2.3 Heritage Conservation

2.3 Heritage Conservation is relevant to the planning proposal. The direction provides that a planning proposal must contain provisions which facilitate the conservation of matter of environmental and Aboriginal cultural heritage significance. Two of the sites that are proposed to be included in Schedule 1 are part of the Murwillumbah Railway Station and Yard Group – State Heritage Register. The Part 5 assessment will need to take into consideration any impacts on these items during the construction of the rail trail. The scale of development of the rail trail is expected to be low impact, however it is recommended consistency with this direction not be determined until consultation with Office of Environment and Heritage in regard to this matter is complete.

## 4.1 Acid Sulfate Soils

Direction 4.1 Acid Sulfate Soils is relevant to the planning proposal. This Direction requires that an acid sulphate soils study must be considered prior to rezoning land mapped as containing ASS. The planning proposal impacts on lands identified with Acid Sulfate Soil risk classes 4 to 5. The proposal for the rail trail will be assessed under Part 5 of the EP&A Act 1979 as this proposal is seeking to permit this type of development without consent. The assessment under Part 5 should give consideration to acid sulfate soils. The scale of development of the rail trail is also expected to be low impact. The inconsistency with this direction can be justified as being of minor significance.

## 4.3 Flood Prone Land

Direction 4.3 Flood Prone Land is relevant to the planning proposal. This direction provides that a planning proposal must contain provisions which give effect to the NSW Flood Prone Land Policy. The planning proposal impacts on lands identified as flood prone. The proposal for the rail trail will be assessed under Part 5 of the EP&A Act 1979 as this proposal is seeking to permit this type of development without consent. The assessment under Part 5 should give consideration to flooding. The scale of development of the rail trail is also expected to be low impact. The inconsistency with this direction can be justified as being of minor significance.

## 4.4 Planning for Bushfire Protection

This direction is relevant to the proposal as the land to which the proposal applies is mapped as being bushfire prone. The direction provides that the RPA must consult with the Commissioner of the NSW Rural Fire Service (RFS). Consultation with the RFS is required after a Gateway determination is issued, and until this consultation has occurred the inconsistency of the proposal with the direction remains unresolved.

## 6.2 Reserving land for Public Purposes

This direction is relevant to the proposal as the land to which the proposal applies is designated for a public purpose (Railway). The proposal includes the following:

<b>Lot</b>	<b>Current</b>	<b>Proposed</b>
Lot 4738	5(a) (Special Uses: Railway) - Tweed LEP 2000	RU2 – Rural Landscape Tweed LEP 2014

The rezoning to remove the public purpose (Railway) and rezone to rural is appropriate as the land is no longer required for rail purposes. This is in accordance with Clause 7 of Direction 6.2.

## 6.3 Site Specific Provisions

Direction 6.3 Site Specific Provisions is relevant to the planning proposal. This direction allows for specific development to be carried out. The proposal for the rail trail will be assessed under Part 5 of the EP&A Act 1979 as this proposal is seeking to permit this type of development without consent. The assessment under Part 5 should give consideration to this direction. The scale of development of the rail trail is also expected to be low impact. The inconsistency with this direction can be justified as being of minor significance.

The proposal is otherwise consistent with relevant S9.1 Directions.

## **State environmental planning policies**

### SEPP (Coastal Management) 2018

The planning proposal may be considered to be inconsistent with the SEPP as the proposal is allowing development without consent, which limits the application of the SEPP. The rail corridor is highly disturbed and any development in these areas is unlikely to cause negative impacts to the land affected by the SEPP. In most cases the refurbishment of the line to low scale pedestrian uses will have less impact than a railway use.

### SEPP (Infrastructure) 2007

The planning proposal does not provide detail regarding the subject land being classified as public reserve. The tenure arrangement with NSW Crown Lands and Transport for NSW are yet to be determined. This planning proposal enables progression of the proposal while tenure details are finalised.

### SEPP 44 – Koala habitat Protection

The planning proposal may be considered to be inconsistent with the SEPP as the proposal is allowing development without consent, which limits the application of the SEPP. However, the proposal for the rail trail will be assessed under Part 5 of the EP&A Act 1979. The assessment under Part 5 will give consideration to SEPP 44.

## SEPP 55 – Remediation of Land

The planning proposal is not considered to be inconsistent with the SEPP. Further assessment of contaminated land will occur as part of the Part 5 assessment.

The proposed rezoning and amendment to Schedule 1 of the LEP will not result in any further inconsistencies with relevant SEPP's.

## **SITE-SPECIFIC ASSESSMENT**

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### **Economic/Social**

Positive economic benefits are expected from the implementation of the rail trail including additional employment during construction and operation of the rail trail and the subsequent expenditure of accommodation and tourism businesses. The Casino to Murwillumbah Rail Trail Study indicates, based on similar rail trails in regional areas, that the net present value will be \$121.8m based on direct economic impact.

The social benefits from the implementation of the rail trail involve preserving open recreational space, increased community involvement and social interaction.

The minor administrative changes to the LEP to allow permissibility of this type of development are unlikely to produce adverse social and economic issues. The assessment under Part 5 of the Act will address social and economic benefits of the overall proposal to construct and operate the rail trail.

### **Environmental**

The planning proposal involves minor administrative matters involving changes to permissibility within the rail corridor. The rail trail will be assessed under Part 5 of the EP&A Act and any negative impacts will be addressed through the assessment process. The conversion from heavy rail to pedestrian traffic will significantly improve impacts around the line.

Tweed Shire contains bushfire prone land. Consultation with the NSW Rural Fire Service will be undertaken as part of the community consultation process.

## **CONSULTATION**

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### **Community**

The planning proposal has not indicated a proposed community consultation period. It is proposed that a 28 day exhibition period be undertaken as the proposal is not considered a low impact proposal under '*A Guide to preparing local environmental plans*'.

### **Agencies**

#### NSW Crown Land and Transport for NSW (TfNSW)

NSW Crown Land and TfNSW are currently negotiating a tenure arrangement for the railway corridor with Council. This negotiation is still ongoing and it is not considered suitable to delay the rail trail works until this issue is resolved. Consultation will be required with NSW Crown Lands and TfNSW after a Gateway determination is issued and before public exhibition.



### NSW Rural Fire Service (RFS)

As some of the land has been identified as bushfire prone and to satisfy section 9.1 Direction regarding bushfire, referral to the NSW Rural Fire Service (RFS) will be required as part of the consultation process. Consultation with RFS is required after a Gateway determination is issued and before public exhibition.

### Office of Environment and Heritage (OEH)

The Murwillumbah Railway Station and Yard Group are a State heritage item and subject to this planning proposal. These proposed uses may have varied impacts on the heritage significance of the item which is rated as 'historically, scientifically, archaeological and socially rare'. Referral to OEH is required as part of the consultation process. Consultation with OEH is required after a Gateway determination is issued and before public exhibition.

### **TIME FRAME**

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The planning proposal includes a project time line which suggests a completion time within 18 months. It is recommended that an 18 month period be accepted.

### **LOCAL PLAN-MAKING AUTHORITY**

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Tweed Shire Council has not accepted plan-making function nor has it requested delegation to finalise the subject proposal. It is recommended that the plan-making function not be issued to Council in this instance.

### **CONCLUSION**

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The preparation of the planning proposal is supported as it:

- rezones land to an appropriate rural zone in accordance with the Standard Instrument LEP land use zones;
- enables the development of this section of the rail trail in accordance with the Rail Trail Study (2014); and
- aligns with Council's commitment to its strategic planning framework that promotes tourism, pedestrian movements and alternative transport options in the local area.



## RECOMMENDATION

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It is recommended that the delegate of the Secretary:

1. agree that any inconsistencies with section 9.1 Directions 2.2 Coastal Protection, 4.1 Acid Sulfate Soils, 4.3 Flood Prone Land and 6.3 Site specific Provisions are minor; and
2. note that the consistencies with section 9.1 Directions 2.3 Heritage Conservation and 4.4 Planning for Bushfire Protection are unresolved and will require further justification.

It is recommended that the delegate of the Minister for Planning, determine that the planning proposal should proceed subject to the following conditions:

1. The planning proposal is required to be updated prior to community consultation to include proposed Additional Permitted Uses and Land Applications maps illustrating the sites where development for a rail trail would be permitted.
2. The planning proposal should be made available for community consultation for a minimum of 28 days.
3. Consultation is required with the following public authorities:
  - Department of Industry - Crown Land
  - NSW Rural Fire Service
  - Office of Environment and Heritage
  - Transport for NSW
4. The time frame for completing the LEP is to be 18 months from the date of the Gateway determination.
5. Council are not authorised to be the local plan-making authority for this plan.



3/8/18

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