

## Planning Services

### Gateway Determination Report

<b>LGA</b>	Tweed Shire
<b>PPA</b>	Tweed Shire Council
<b>NAME</b>	Rezoning public land and schedule additional permitted uses (2 homes)
<b>NUMBER</b>	PP_2018_TWEED_003_00
<b>LEP TO BE AMENDED</b>	Tweed Local Environmental Plan 2014
<b>ADDRESS</b>	Various sites (see Table 1)
<b>DESCRIPTION</b>	Various property descriptions (See Table 1)
<b>RECEIVED</b>	12 April 2018
<b>FILE NO.</b>	IRF18/1944
<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 LEP 2014 to rezone 9 sites in public ownership (Council and Crown) to facilitate appropriate land use and benefit the community. Additionally, a private owned site is to be scheduled to allow a dwelling house as permissible with consent on an allotment less than the minimum area required.

#### Site description and existing planning controls

Property details, current uses and zonings, and proposed amendments are indicated in Table 1. Maps identifying the 10 sites are given in Section 2 of the planning proposal and shown in Figures 1 – 10 below.

Item No.	Property Description	Current land use	Existing zoning	Proposed amendment
1	5 Yao Street, Kingscliff Lot 19 Section 16 DP 758571	Vacant land	RE1 Public Recreation	R2 Low Density Residential, HOB 9m FSR 0.8:1 LSZ 450m2
2	10 Laura Street, Banora Point, Lot 569 DP 755740	detached, single storey residential dwelling	SP2 Infrastructure	R2 Low Density Residential, HOB 9m FSR 0.8:1 LSZ 450m2

3	Oyster Point Road, Banora Point, Lot 7008 DP 1069422 & Lot 2 DP 1140522	Vacant land and M1 corridor	SP2 Infrastructure and RE1 Public Recreation	Permit recreation related land uses on land zoned SP2
4	10 and 92 Lundberg Drive, South Murwillumbah, Lot 1 DP 232745 & part Lot 2 DP1139059	Disused Council quarry	RE1 Public Recreation	IN1 General Industrial, LSZ 2000m <sup>2</sup>  HOB 10 m
5	1-7 River Street, South Murwillumbah  Lots 1-4 DP 27264	Four contiguous waterfront lots, Lots 1, 3 and 4 vacant, Lot 2 single story dwelling	B5 Business Development	RE1 Public Recreation, Remove FSR
6	Urliup Road, Urliup Lot 8 DP 630567	Vacant land with picnic structures	RU1 Public recreation	RE1 Public Recreation, Remove MLS
7	Rous River Way, Murwillumbah Lot 132 DP 1139107	Pathway and picnic structures	RU1 Primary Production	RE1 Public Recreation, Remove MLS
8	8-10 York Street, Murwillumbah Lot 1 DP 722529, 7-9 DP 8520	Hospital	SP2 Emergency Services Facility	Change labelling LZM "hospital"
9	719 Eviron Road, Eviron, Lot 1 DP 34555	Generally vacant, roadway and shed	SP2 Infrastructure (Waste Management Facilities)	*Schedule 1 a <i>council pound</i> on the site and labelling LZM as "Waste Management Facilities, Council Pound & Rehoming Facility"
10	224 Carool Road, Carool, Lot 22 DP 821933 & Lot 14 DP 821933	vacant	RU1 Primary Production	*Schedule 1 amendment enabling development of a <i>dwelling house</i>

**Table 1. Property details, current uses and zonings and proposed amendments**

\*Wording is to be expressed in plain English to enable Parliamentary Counsel to determine most appropriate method of achieving the stated outcome.

## Surrounding area

The planning proposal spans the local government area, covering both urban and rural lands. The mix of landuses is best described using aerial photographs obtained from Six Maps juxtaposed against the LEP zoning map (see Figures1 – 10).

Fig. 1: 5 Yao Street, Kingscliff



Fig 2: 10 Laura Street, Banora Point



Fig. 3: Oyster Point Road, Banora Point





Fig. 4: 10 and 92 Lundberg Drive, South Murwillumbah



Fig 5: 1-7 River Street, Sth. Murwillumbah



Fig 6: Urliup Road, Urliup





Fig. 7: Rous River Way, Murwillumbah



Fig. 8: 8-10 York Street, Murwillumbah



Fig. 9: 719 Eviron Road, Eviron



Fig. 10: 224 Carool Road, Carool



## **Summary of recommendation**

It is recommended that the planning proposal proceed as submitted conditional upon the creation of the Carool Road dwelling eligibility be expressed in plain English. This will allow PC to draft the LEP in the most appropriate manner to achieve the objective of the planning proposal. The planning proposal should delete the intention to Schedule a Council Pound as an additional permitted use, if the LZN is to be labelled as "Waste Management Facilities, Council Pound & Rehoming Facility".

## **PROPOSAL**

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### **Objectives or intended outcomes**

The objectives and their outcomes are clearly explained separately for each of the 10 items. To summarise, the amendments generally serve to apply a landuse zone and appropriate numerical standards (HOB, FSR and MLS) to public lands so the LEP controls are consistent with the existing and proposed land uses. Items 4 (facilitate relocation of businesses in accordance with strategy), 9 (facilitate relocation of Council Pound and Rehoming facility) and 10 (allow a dwelling on private land that does not comply with MLS) seek to enable specific development. The objectives are clear and do not require amendment prior to community consultation.

### **Explanation of provisions**

The provisions of the planning proposal are clearly explained, however, the provisions relating to Item 10 to amend Schedule 1 to permit a dwelling house as an additional use, should be expressed in plain English terms, to allow for instructions and advice of Parliamentary Counsel as the most appropriate manner to achieve the objective.

This is similar to Item 9 which lists two methods of making Pound and Rehoming Centres permissible with consent on this land. A condition has been included on the Gateway determination requesting this matter be clarified.

### **Mapping**

Table 1 indicates the proposed mapping amendments for each item. Section 4 of the planning proposal shows the current and proposed controls and will be adequate in their current form for community consultation.

## **NEED FOR THE PLANNING PROPOSAL**

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After reviewing the planning proposal's justification, it is considered strategically and operationally justified and an appropriate way to achieve the various intended outcomes.

## **STRATEGIC ASSESSMENT**

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### **State**

The planning proposal is not inconsistent with the State strategic planning framework.

### **Regional / District**

The planning proposal is consistent with the North Coast Regional Plan 2036. In relation to Item 6; the rezoning of RU1 Primary Production land to RE1 Public Recreation land, active and passive community open spaces may be located outside

of the urban growth areas. The planning proposal rezones mapped Regionally Significant Farmland and the planning proposal applies the Important Farmland Interim Variation Criteria. The variation is supported; however, the planning proposal should be amended to include the Variation Criteria assessment under Question 3 of Section B. Direction 15 of the Plan promotes the development of healthy, safe, socially engaged and well-connected communities. This direction is met through Items 3, 5, 6, 7 and 9 which will improve community access to social infrastructure. The planning proposal actions Direction 3, requiring the management of natural hazards by facilitating the relocation of businesses from flood prone to a flood free land, as explained in Item 3 of the planning proposal.

## **Local**

The principal local strategic plan in the Tweed Shire is the Tweed Community Strategic Plan (TCSP) 2017/2027. The TCSPs regional vision states for the region: *The Tweed will be recognised for its desirable lifestyle, strong community, unique character and environment and the opportunities its residents enjoy.*

This planning proposal updates the Tweed LEP with respect of improved utilisation of public land:

- Four (4) open space areas will have their land use table broadened to enable recreation.
- Two (2) superfluous allotments owned by Council and NSW Transport are proposed to be disposed of on the open market.
- One (1) residential sized allotment currently underutilised and superfluous to Council's recreational needs is proposed to be rezoned to residential allowing this allotment to be sold for residential purposes.
- Adding the additional permitted use for a Council pound and rehoming facility will consolidate Council uses on the one site and facilitate upgrading of facilities.
- Rezoning of Council land at Lundberg Drive in South Murwillumbah will facilitate ongoing planning investigation into relocation of industries from flood-prone land located along Tweed Valley Way.
- Scheduling a dwelling house on land in Carool consolidates residential development consistent with the locality and improves environmental management of the land.

The proposal is also not inconsistent with the Tweed Urban and Employment Land Release Strategy 2009.

## **Section 9.1 Ministerial Directions**

### *Direction 1.1 Business and Industrial Zone*

Item 4 proposes the rezoning of a disused Council quarry from RE1 to IN1. The LSZ will be amended to 2,000m<sup>2</sup> and the HOB will be 10m. This item at 10 and 92 Lundberg Drive, South Murwillumbah are wholly surrounded by the Murwillumbah South Industrial Precinct (Fig.11). The rezoning to industrial will encourage employment growth in suitable locations, ie. it is flood free and has supporting adjacent infrastructure and increases the supply of unconstrained land suitable for industrial development. The additional IN1 land offsets the four contiguous waterfront lots within the B5 township area of South Murwillumbah (Item 5) that are proposed to be rezoned to RE1. These lots are vacant, other than a single dwelling, and are



unsuitable for commercial development due its flood prone nature. The rezoning to RE1 will add to a contiguous riverfront recreational strip.

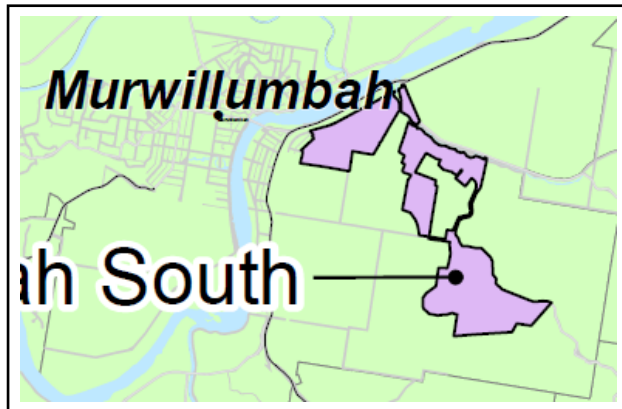


Figure 11. Tweed Shire Industrial Precinct Map excerpt

Both items 4 and 5 are located within the Urban Growth Area identified in the Plan. The planning proposal's inconsistency with the direction are considered of minor significance.

#### *Direction 1.2 Rural Zones*

Items 6 and 7 propose the rezoning of RU1 zoned land to RE1, and removal of the associated MLS. This is not inconsistent with the terms of the Direction as zoning to recreation is not prohibited.

The proposal also includes the scheduling of a dwelling eligibility at 224 Carool Road, Carool (Item 10). This increases the permissible density within the RU1 zone for this locality (based on a 40ha MLS) inconsistent with the Direction. This inconsistency is considered of minor significance given its limited capacity to impact on the overall density of the area.

#### *Direction 1.5 Rural Lands*

This direction applies to three items within the planning proposal;

- Item 6, Lot 8 DP 630567 Uriup Road, Uriup is currently vacant land with picnic facilities and will be changed from RU1 to RE1.
- Item 7, Lot 132 DP 1139107, Rous River Way, Murwillumbah and contains a pathway and picnic structures and is to be rezoned from RU1 to RE1.
- Item 10, 224 Carool Road, Carool, Lot 22 DP 821933 & Lot 14 DP 821933 being vacant land within an area that has been historically subdivided to a density similar to rural residential development. The planning proposal will enable a dwelling on the allotment that is less than the 40ha requirement for a dwelling house.

It is considered that Item 6 and 7 are consistent with the Rural Planning Principles of SEPP (Rural Lands) 2008, particularly 7(d) as it balances the social, economic and environmental interests of the community and, 7(e) as it identifies and protects natural resources, having regard to maintaining biodiversity and the protection of native vegetation.



It is considered that Item 10 is consistent with the Rural Planning Principles of SEPP (Rural Lands) 2008, particularly 7(f) as it provides opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities, and 7(g) by considering the impacts on services and infrastructure in an appropriate location for rural housing.

As the proposal is consistent with the Rural Planning principles it is considered consistent with this Direction.

#### *Direction 2.2 Coastal Protection*

The planning proposal affects land within the coastal environment and coastal use areas and as such this Direction applies. The Direction requires the PP to include provisions giving effect to various Coastal documents. The planning proposal is justifiably inconsistent with the terms of the direction as the existing LEP contains adequate conservation provisions.

#### *Direction 2.3 Heritage Conservation*

The Direction requires a planning proposal to contain provisions relating to the conservation and protection of items of heritage significance. The planning proposal is justifiable inconsistent with the terms of the direction as the existing LEP contains adequate conservation provisions.

#### *3.1 Residential zones*

This Direction applies as Items 1 and 2 of the planning proposal will be zoned for Residential purposes. The Direction requires that the proposal broadens the choice of building types and locations, amongst other things. The provision of two additional building blocks across locations in the LGA is considered consistent with the terms and objectives of the Direction.

#### *Direction 3.4 Integrating Land Use and Transport*

This Direction applies to Items 3, 5, 6 and 7. These rezoning or labelling these items for recreational purposes enables the facilities to be maintained and provided to improve access to housing, jobs and services by walking and cycling. The planning proposal is consistent with the Direction.

#### *3.5 Development Near Licensed Aerodromes*

Item 4, 10 and 92 Lundberg Drive, South Murwillumbah is within about 500m of a licensed aerodrome. The aerodrome is a small-scale operation and is unlikely to be impacted by the proposed IN1 landuse. Consultation has not been undertaken and in the circumstance, is unwarranted. The inconsistency with the Direction; by not consult with CASA and the lessee of the licensed aerodrome, is of minor significance.

#### *Direction 4.1 Acid Sulfate Soils*

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 ranging from 3 to 5. The provisions of Clause 7.1 of the existing LEP will remain unamended and continue to ensure adequate assessment and appropriate development of these lands. The inconsistency with this direction is of minor significance.

#### *Direction 4.3 Flood Prone Land*

Items 5, 6 and 7 are located on flood prone land. These items are all proposed to be rezoned to RE1. This proposal does not however introduce flood related controls as these already are in place in the Tweed LEP. As no controls are introduced this proposal is inconsistent with Direction 4.3. This inconsistency can be justified as being of minor significance.

#### *Direction 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.

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

Item 6, Lot 8 DP 630567 Uriup Road, Uriup is to be rezoned from RU1 to RE1. The land is mapped as Regionally Significant Farmland and the Important Farmland Interim Variation Criteria have been applied. The application of the Important Farmland Variation Criteria to this planning proposal is supported.

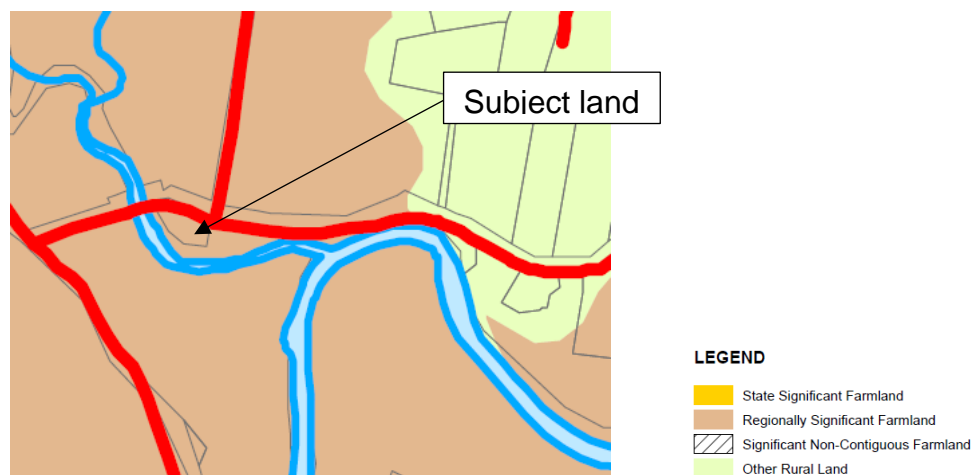


Figure 12. Extract from Northern Rivers Farmland Protection Project, Final Map 2005 (s.117(2) Direction).

The planning proposal is consistent with the Variation Criteria as follows:

The RE1 Public Recreation is considered a zone for urban purposes. A council must not rezone Regionally Significant Farmland for urban purposes unless it is consistent with the North Coast Regional Plan 2036. When assessed against Appendix B Important Farmland Interim Variation Criteria of the Plan:

The land is considered isolated from other important farmland and is not capable of supporting sustainable agricultural production. The land is between 25m and 55m in width and about 4680m<sup>2</sup> in area, with heavy remnant vegetation. The site is physically constrained by the Dungay Creek, Dulguigan Road and an unformed road reserve. Cane farming operations typically maintain a 10m grassed buffer between lot boundaries, or up to 20m adjacent to waterways. This would reduce the viable area for cane farming on this allotment to negate its viability.

The proposed RE1 Public Recreation Zone will not increase the likelihood of conflict and will not impact on current or future agricultural activities in the locality. It is classed as Community land under the *Local Government Act 1993*, and is currently managed for passive recreational purposes, ie. mown with picnic facilities. These uses have been undertaken without conflict and will continue to do so.

Council's Natural Resources Management Unit are supportive of a rezoning for public recreation and the more appropriate zoning will enable a Plan of Management to be prepared for the land. The delivery of any infrastructure associated with the public recreational use of the land is physically and economically feasible and is likely to be funded through the provision of any open space contributions accrued to the locality under section 7.11 of the *Environmental Planning and Assessment Act 1979*.

The proposed public recreation land use will promote and conserve the environmental value of the remnant vegetation and its sensitive location adjacent to the Dungay Creek, by permitting the preparation and application of a Plan of Management in accordance with the *LGA 1993*.

The subject land is flood prone, bushfire-prone and low risk acid sulfate soils. A public recreation zone, due to its intermittent use, is less impacted by these risks than other urban land uses, such as residential or commercial zones.

Considering the above the planning proposal is consistent with the North Coast Regional Plan 2036 and the inconsistency with the direction is justified accordingly.

#### *5.10 Implementation of Regional Plans*

The planning proposal is consistent with the North Coast Regional Plan 2036 and a variation under the Important Farmland Interim Variation Criteria is supported (as discussed above).

#### *6.2 Reserving Land for Public Purposes*

The Direction requires the approval of the relevant public authority and the Secretary where a planning proposal seeks to create, alter or reduce existing zonings of land for public purposes. The planning proposal seeks to rezone Items 1-9, each triggering the application of the Direction. Councils, where it is the relevant public authority, (Items 1, 4, 5, 6,7 and 9) consent is implied in the submission of the planning proposal. The resolution of Council for the submission of the planning proposal should be exhibited with the planning proposal. The NSW Government's 'Transport NSW' Department is the relevant public authority for Item 2 and 3 and NSW Health is the relevant public authority for Item 8. Approval of these two public authorities is required to resolve the inconsistency with this direction. This approval is to be obtained prior to community consultation commencing. That the approval of the Secretary has not been given is an inconsistency of minor significance as the amendments to the zones only serve to regularise the existing land use and serve the public benefit, as well as being adequately addressed by the approval of the relevant public authority. Inconsistency with this Direction will not be resolved until completion of Agency consultation.



### *Direction 6.3 Site Specific Provisions*

The planning proposal seeks to allow site specific provisions; Item 3 (Permit recreation related land uses on land zoned SP2), Item 8 (Change labelling LZM “hospital”), Item 9 (Schedule council pound on the site and labelling LZM as “Waste Management Facilities, Council Pound & Rehoming Facility”) and Item 10 (schedule a “dwelling house” on an undersized lot). The planning proposal is consistent with the direction as it allows the use of land without imposing any development standards or requirements in addition to those already contained in the existing LEP, in accordance with 4(c) of the direction.

### **State environmental planning policies**

State Environmental Planning Policy (Coastal Management) 2018 applies to parts of the Tweed Shire and the planning proposal is not inconsistent with the SEPP.

State Environmental Planning Policy (Infrastructure) 2007 affects four sites zoned with the SP2 Infrastructure zone: Items 2, (Laura Street in Banora Point), 3 (Oyster Creek Point, Banora Point), 8 (Murwillumbah Hospital) and 9 (Eviron Rd, Eviron). The planning proposal is considered consistent with the aims of the Policy by improving regulatory certainty and efficiency through a consistent planning regime for infrastructure and the provision of services, providing greater flexibility in the location of infrastructure and service facilities, and allowing for the efficient development, redevelopment or disposal of surplus government owned land.

State Environmental Planning Policy (Rural Lands) 2008 applies to Items 6 (Urliup Road, Urliup RU1 to RE1), 7 (Rous River Way, Murwillumbah RU1 to RE1) and 10 (dwelling house in RU1) of the planning proposal. The planning proposal is consistent with the aims of the SEPP and the provisions of the Rural Planning Principles therein.

## **SITE-SPECIFIC ASSESSMENT**

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### **Social**

The planning proposal considers the social impact of the proposed amendments. A positive social impact is likely through the provision of two additional dwellings in areas established with residential infrastructure (Items 1 and 10). The planning proposal also seeks to enable improved community recreational facilities through the application of appropriate zoning, and where applicable, development of Plans of Management for community land.

### **Environmental**

The planning proposal is unlikely to have an adverse environmental impact, as it seeks to remove inappropriate zonings from environmentally sensitive areas (ie. adjacent to waterways and flood prone areas) and rezone appropriately so that sites may be used for recreational purposes. Complementary zoning of other areas unaffected by flooding and already substantially cleared (eg. disused quarry site) are proposed to offset any loss.

## Economic

The planning proposal will have a positive economic impact by the establishment of land uses in appropriate and grouped locations. The sale of surplus council and state-owned land will also provide a positive economic benefit to the community.

## CONSULTATION

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### Community

Council has proposed to exhibit the planning proposal for 28 days. Whilst the planning proposal includes many minor housekeeping amendments, it does include other matters that require further time. 28 days is considered adequate for the exhibition of the planning proposal.

### Agencies

Requests have been received from Roads and Maritime Services regarding the rezoning of the Item 2, Banora Point land, and Northern NSW Local Health District to correct the LZN label. The planning proposal is to be provided to these authorities for their approval in accordance with Direction 6.2. Consultation with NSW RFS is also required to resolve compliance with Direction 4.4.

## TIME FRAME

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Council has proposed a six-month timeframe for finalisation of the plan which is appropriate for this matter.

## LOCAL PLAN-MAKING AUTHORITY

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Council has not requested to be the local plan-making authority. The Department supports their view.

## CONCLUSION

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The planning proposal is supported to proceed with conditions as it seeks to remove inappropriate zonings and apply those consistent with existing land use and capability, allows for the potential sale of surplus council and crown land, and provides for improved land management strategies.

## RECOMMENDATION

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It is recommended that the delegate of the Secretary:

1. **agree** that any inconsistencies with section 9.1 Directions 1.1 Business and Industrial Zone, 1.2 Rural Zones, 2.2 Coastal Protection, 2.3 Heritage Conservation, 3.5 Development Near Licensed Aerodromes Direction, 4.1 Acid Sulfate Soils, 4.3 Flood Prone Land, and 5.3 Farmland of State and Regional Significance on the NSW Far North Coast are minor or justified; and
2. **note** that the consistency with section 9.1 Directions 4.4 Planning for Bushfire Protection and 6.2 Reserving Land for Public Purposes is unresolved and will require 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 should be made available for community consultation for a minimum of 28 days.

2. Consultation is required with the following public authorities:
  - NSW Transport - Roads and Maritime Services (as the relevant public authority for Items 2 and 3 as required by Direction 6.2 Reserving Land for Public Purposes)
  - NSW Health (as the relevant public authority for Item 8 as required by Direction 6.2 Reserving Land for Public Purposes)
  - NSW Rural Fire Service
3. The time frame for completing the LEP is to be 6 months from the date of the Gateway determination.
4. Council should not be authorised to be the local plan-making authority to make this plan.
5. The resolution of Council for the submission of the planning proposal is to be exhibited with the planning proposal, to satisfy Direction 6.2 Reserving Land for Public Purposes
6. Landowners adjoining Item 1 - 5 Yao Street, Kingscliff, Item 9 - 19 Eviron Road, Eviron and Item 10 - 224 Carool Road, Carool are to be individually notified that the planning proposal on public exhibition. The letter is to reference the Item that their property is adjacent to.
7. The following minor changes are to be made to the planning proposal:
  - Correct the reference to "Direction 2.1" to read "Direction 3.1" on page 14;
  - Correct the reference to "Direction 61" to read "Direction 6.1" on page 17;
  - Section B, Question 3 is to include an assessment of the Interim Variation Criteria for Regionally significant farmland;
  - The outcome to enable a dwelling on 224 Carool Road, Carool, is to be written in plain English. Parliamentary Counsel will advise of the most appropriate amendment method to achieve this purpose; and
  - The outcome to permit a Council Pound and Rehoming Facility/Centre at 719 Environ Road, Environ is to be written in plain English, or the preferred method of achieving this determined.



9/5/18

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11-5-2018

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