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Plan finalisation report – PP-2023-574

Tweed Local Environmental Plan 2014 Amendment
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Acknowledgment of Country

The Department of Planning and Environment acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

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1 Introduction

1.1 Overview

1.1.1 Name of draft LEP

Tweed Local Environmental Plan (LEP) 2014 (Amendment No. 39) seeks to introduce C2 Environmental Conservation and C3 Environmental Management zones into Tweed Local Environmental Plan 2014. This will be achieved by introducing the land use tables into the Tweed LEP 2014. The proposal does not apply the zones spatially to any land within the local government area (LGA).

The introduction and application of conservation zones in Tweed Shire is required to follow a standardised approach established under the Department of Planning and Environment's Northern Councils E Zone Review Final Recommendations Report (C Zone Report). This approach outlines requirements for conservation zone land use tables, specifically how "extensive agriculture" is to be incorporated.

As, this proposal does not seek to apply conservation zones spatially to any land within the LGA, the proposal has been reviewed against only the requirements of the C Zone Report that are relevant to the objectives of this proposal. Any future spatial application of these zones will be required to address the consistency of the C Zone Report through the supporting planning proposal process.

1.1.2 Site description

Table 1 Site description

Site Description	The planning proposal (Attachment A) applies to the wider local government area.
Type	District
Council / LGA	Tweed Shire
LGA	Tweed Shire

1.1.3 Purpose of plan

Tweed Local Environmental Plan (LEP) 2014 (Amendment No. 39) seeks to introduce conservation zones into Tweed LEP 2014 and reflects a legislative change to the instrument through the introduction of the associated land use tables.

The proposal does not seek to apply these zones spatially to any land within the LGA, nor does it propose to make any change to the associated clauses within the instrument. It is intended that these changes will be applied through a future planning proposal.

1.1.4 State electorate and local member

The site falls within the Tweed and Lismore state electorates. Geoff Provest MP and Janelle Saffin MP are the respective State Members.

The site falls within the Richmond federal electorate. Justine Elliot MP is the Federal Member.

To the team's knowledge, none of the MPs have made any written representations regarding the proposal.

There are no donations or gifts to disclose, and a political donation disclosure is not required.

There have been no meetings or communications with registered lobbyists with respect to this proposal.

2 Gateway determination and alterations

The Gateway determination issued on 3/03/2023 (**Attachment B**) determined that the proposal should proceed subject to conditions. Council has met all the Gateway determination conditions.

In accordance with the Gateway determination the proposal is due to be finalised on 3/09/2023.

3 Public exhibition and post-exhibition changes

In accordance with the Gateway determination, the proposal was publicly exhibited by Council from 2/05/2023 to 29/05/2020.

3.1 Submissions during exhibition

3.1.1 Submissions objecting to and/or raising issues about the proposal

A total of 33 community submissions were received, and these are summarised by Council in **Attachment A**. Of the 33 submissions, five were identified as providing specific feedback on the proposed zone objectives or land use permissibility, subject to the objective of the planning proposal. Some submissions also raised concerns related to the public exhibition of the planning proposal

The remainder of issues raised were more general regarding objections to conservation zones and the application of these to rural land, objection to separating the introduction of conservation zones from the associated mapping, appeal rights to land zoning and that application of conservation zones should be a voluntary process.

Tweed Shire Council have elected to undertake a staged process to implement its review of future conservation zones. This has been supported by the Department. The matters raised in the wider objections are noted and will be addressed more appropriately in those future stages where the issues are applicable when the zones are being applied spatially to specific sites.

No public meeting was held following public exhibition as Tweed Shire Council determined within its own internal protocols that this was not required as part of this first stage, as the proposal did not specifically affect any land or landowners.

The Department is satisfied, based on information submitted by Council as part of the finalisation package, that Council has met the requirements for public exhibition under condition 2 of the Gateway determination, despite some concerns raised in submissions to Council's website, and has adequately addressed issues raised in submissions regarding conservation zones and process generally.

The following discussion will therefore focus on the five submissions that identified specific feedback on the proposed zone objectives or land use permissibility, within the established objective of the planning proposal.

Of the five community submissions received relating specifically to the land use tables, four were in support and one provided suggestions to the proposed permissibility of some uses. These suggestions and Council's response is summarised in Table 2.

Table 2 Suggested Changes to Land Use Tables

Suggested change	Council response	Department comment
Extensive agriculture as permitted without consent in the C2 Environmental Conservation zone	<p>The proposed land use table for C2 Environmental Conservation permits extensive agriculture with consent in the zone.</p> <p>Council deems this to be the most appropriate approach, allowing for merit-based consideration of development proposals.</p>	The inclusion of extensive agriculture as permitted with consent in the C2 zone is consistent with the requirements outlined under the C Zone Report for Far North Coast LEPs and is considered appropriate.
Agritourism permitted within the C3 Environmental Management zone	The agritourism land use is not considered compatible with achieving the conservation outcomes identified in this zone, due to the potential level of disturbance that could result from a proposal seeking to carry out the uses within this parent term on future C3 zoned land.	Agritourism is not a prescribed use in the C3 zone under the Standard Instrument LEP and a matter for Council's determination. It is therefore considered that the proposal as outlined by Council is appropriate.
Restaurants or cafes permitted within the C3 Environmental Management zone	The restaurant or cafe land use is not considered compatible with achieving the conservation outcomes identified in this zone, due to the potential level of disturbance that could result from a proposal seeking to carry out the uses within this parent term on future C3 zoned land.	Restaurant or café is not a prescribed use in the C3 zone under the Standard Instrument LEP and a matter for Council's determination. It is therefore considered that the proposal as outlined by Council is appropriate.

3.2 Advice from agencies

In accordance with the Gateway determination, Council was required to consult with the NSW Biodiversity and Conservation Division. In its submission (**Attachment C**), BCD noted the proposal aligned with the mandated requirements of the Standard Instrument LEP and the C Zone Report. BCD raised no concerns with the proposal proceeding in its current form and noted it would provide further comment at a future stage in relation to the spatial context for the C2 and C3 zones.

The Department considers Council has adequately addressed matters raised in submissions from public authorities.

3.3 Post-exhibition changes (Council)

No changes were made to the overall proposal post exhibition by Council. Council made one administrative change to the planning proposal document, to identify and summarise the exhibition of the proposal and submissions received. Council submitted this final planning proposal to the Department as part of the finalisation package, to assist the Department in its role as local plan-making authority.

3.4 Post-exhibition changes (Department)

Parliamentary Counsel in the drafting of the final plan removed two proposed optional zone objectives that it considered were already adequately addressed by the mandated objectives. The changes are considered appropriate and do not affect the intent of the planning proposal.

4 Department's assessment

The proposal has been subject to detailed review and assessment through the Department's Gateway determination (**Attachment B**) and subsequent planning proposal processes. It has also been subject to a high level of public consultation and engagement.

The following reassesses the proposal against relevant Section 9.1 Directions, SEPPs, Regional and District Plans and Council's Local Strategic Planning Statement. It also reassesses any potential key impacts associated with the proposal (as modified).

As outlined in the Gateway determination report (**Attachment D**), the planning proposal submitted to the Department for finalisation:

- Remains consistent with the North Coast Regional Plan 2041;
- Remains consistent with the Council's Local Strategic Planning Statement and Community Strategic Plan; and
- Will introduce conservation zones to the Tweed LEP 2014 in accordance with the recommendations of the C Zone Report.

The following tables identify whether the proposal is consistent with the assessment undertaken at the Gateway determination stage. Where the proposal is inconsistent with this assessment, requires further analysis or requires reconsideration of any unresolved matters these are addressed in Section 4.1

Table 2 Summary of strategic assessment

	Consistent with Gateway determination report Assessment	
Regional Plan	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Local Strategic Planning Statement	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Section 9.1 Ministerial Directions	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
State Environmental Planning Policies (SEPPs)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1

Table 3 Summary of site-specific assessment

Site-specific assessment	Consistent with Gateway determination report Assessment	
Social and economic impacts	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Environmental impacts	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1

Site-specific assessment	Consistent with Gateway determination report Assessment
Infrastructure	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, refer to section 4.1

5 Post-assessment consultation

The Department consulted with the following stakeholders after the assessment.

Table 4 Consultation following the Department's assessment

Stakeholder	Consultation	The Department is satisfied with the draft LEP
Council	<p>Council was consulted on the terms of the draft instrument under clause 3.36(1) of the <i>Environmental Planning and Assessment Act 1979</i> (Attachment E).</p> <p>Council confirmed on 17/08/2023 that it approved the draft and that the plan should be made (Attachment F).</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
Parliamentary Counsel Opinion	<p>On 24/08/2023, Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. This Opinion is provided at Attachment PC.</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details

No maps have been reviewed by the Department's ePlanning team as this proposal does not involve the spatial application of the proposed zones to any land and relates specifically to the inclusion of the land use tables only.

Council intends to pursue spatial application and amendments to associated clauses as part of a future planning proposal, in accordance with the staged approach.

6 Recommendation

It is recommended that the Minister's delegate as the local plan-making authority determine to make the draft LEP under clause 3.36(2)(a) of the Act because:

- The draft LEP has strategic merit being consistent with North Coast Regional Plan 2041.
- It is consistent with the Gateway Determination.
- Issues raised during consultation have been addressed, and there are no outstanding agency objections to the proposal.
- Changes made at the legal drafting stage reflect the intended objectives of the original proposal.



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Attachments

Attachment	Document
A	Planning proposal (post-exhibition version)
B	Gateway determination
C	BCD submission
D	Gateway determination report
E	Council comments on draft LEP
PC	PC opinion
LEP	Draft LEP