



TWEED
SHIRE COUNCIL

Mayor: Cr K Milne

Councillors: P Allsop
R Byrnes
C Cherry (Deputy Mayor)
R Cooper
J Owen
W Polglase

Agenda

Ordinary Council Meeting Thursday 1 November 2018

held at

**Harvard Room, Tweed Heads Administration Building,
Brett Street, Tweed Heads**

commencing at the conclusion of the Planning Committee meeting
which commences at 5.30pm.

Principles for Local Government

The object of the principles for Tweed Shire Council, as set out in Section 8 of the Local Government Amendment (Governance and Planning) Bill 2016, is to provide guidance to enable council to carry out its functions in a way that facilitates a local community that is strong, healthy and prosperous.

Guiding Principles for Tweed Shire Council

(1) Exercise of functions generally

The following general principles apply to the exercise of functions by Tweed Shire Council:

- (a) Provide strong and effective representation, leadership, planning and decision-making.
- (b) Carry out functions in a way that provides the best possible value for residents and ratepayers.
- (c) Plan strategically, using the integrated planning and reporting framework, for the provision of effective and efficient services and regulation to meet the diverse needs of the local community.
- (d) Apply the integrated planning and reporting framework in carrying out their functions so as to achieve desired outcomes and continuous improvements.
- (e) Work co-operatively with other councils and the State government to achieve desired outcomes for the local community.
- (f) Manage lands and other assets so that current and future local community needs can be met in an affordable way.
- (g) Work with others to secure appropriate services for local community needs.
- (h) Act fairly, ethically and without bias in the interests of the local community.
- (i) Be responsible employers and provide a consultative and supportive working environment for staff.

(2) Decision-making

The following principles apply to decision-making by Tweed Shire Council (subject to any other applicable law):

- (a) Recognise diverse local community needs and interests.
- (b) Consider social justice principles.
- (c) Consider the long term and cumulative effects of actions on future generations.
- (d) Consider the principles of ecologically sustainable development.
- (e) Decision-making should be transparent and decision-makers are to be accountable for decisions and omissions.

(3) Community participation

Council should actively engage with the local community, through the use of the integrated planning and reporting framework and other measures.

Items for Consideration of Council:

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CONFIRMATION OF PLANNING COMMITTEE MINUTES

1 [CONMIN-CM] Adoption of the Recommendations of the Planning Committee Meeting held Thursday 1 November 2018

SUBMITTED BY: Corporate Governance

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Making decisions with you
We're in this together

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 2 Making decisions with you
- 2.2 Engagement
- 2.2.4 Councillor and Civic Business - To provide assistance to Councillors and support for Council to operate within its legal framework.

ROLE: **Leader**

SUMMARY OF REPORT:

The recommendations of the Ordinary Planning Committee Meeting held Thursday 1 November 2018 require their adoption by Council for the resolutions to be acted upon.

RECOMMENDATION:

That the recommendations of the Ordinary Planning Committee Meeting held Thursday 1 November 2018 be adopted.

REPORT:

As per Summary.

COUNCIL IMPLICATIONS:

a. Policy:

Code of Meeting Practice.

b. Budget/Long Term Financial Plan:

Not applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

*To view any "**non confidential**" attachments listed below, access the meetings link on Council's website www.tweed.nsw.gov.au or visit Council's offices at Tweed Heads or Murwillumbah (from Friday the week before the meeting) or Council's libraries (from Monday the week of the meeting).*

Nil.

REPORTS THROUGH THE GENERAL MANAGER

REPORTS FROM THE DIRECTOR ENGINEERING

2 [E-CM] Planning Proposal PP18/0003 to facilitate Northern Rivers Rail Trail Stage 1: Murwillumbah to Crabbes Creek

SUBMITTED BY: Director

mhm



People, places and moving around
Who we are and how we live

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 3 People, places and moving around
- 3.3 Moving around
- 3.3.3 Design Services - To produce civil designs and undertake environmental assessment for public infrastructure.

ROLE: **Leader**

SUMMARY OF REPORT:

This report describes the outcomes of a public exhibition and agency consultation period for a planning proposal which would amend the *Tweed Local Environmental Plan 2014* in order to enable the proposed rail trail between Murwillumbah and Crabbes Creek to be assessed and carried out under Part 5 'Infrastructure and environmental impact assessment' of the *Environmental Planning and Assessment Act 1979*.

The public exhibition and consultation attracted a total of seven submissions consisting of four from public authorities and three from the general public. The content of these is considered and does not necessitate any amendment to the exhibited LEP amendment.

The report concludes the draft LEP is suitable to be made and to expedite that process the planning proposal document should be updated to describe the public exhibition and consideration of issues and forwarded to the Department of Planning and Environment for Plan making at the earliest time.

RECOMMENDATION:

That in respect of Planning Proposal PP18/0003 to facilitate Northern Rivers Rail Trail Stage 1: Murwillumbah to Crabbes Creek, endorses the following:

1. The public submission reply and consideration of issues is noted;

2. **The Planning Proposal is to be updated to describe the public exhibition and consideration of issues and forwarded to the Department of Planning and Environment for the Plan to be made; and**
3. **The Office of Environment and Heritage is to be consulted during the Council's assessment of the Review of Environmental Factors.**

REPORT:

At its meeting of 7th June 2018 Council resolved to prepare a planning proposal to amend the *Tweed Local Environmental Plan 2014* to enable the proposed rail trail between Murwillumbah and Crabbes Creek to be carried out and assessed under a single planning approvals pathway.

The Part 5 “Infrastructure and environmental impact assessment” pathway provided under the *Environmental Planning and Assessment Act 1979* for public authorities and works is widely regarded for being better suited for public infrastructure works because of the potential cost savings, greater certainty around timeframes and its flexibility in allowing for innovation in design. Council unanimously endorsed the use of this planning pathway for the rail trail.

The officers’ subsequently prepared and submitted a planning proposal to the NSW Department of Planning and Environment and a gateway determination was issued on 3 August 2018.

Gateway Determination - Conditions

The gateway determination required public exhibition of the planning proposal and consultation with the following NSW government agencies:

- Department of Industries – NSW Crown Land
- NSW Rural Fire Service
- Office of Environment and Heritage and
- Transport for NSW.

Public Exhibition and Agency Consultation

The Gateway planning proposal was publicly exhibited from Tuesday the 21 August 2018 to Friday the 28 September 2018 at the Murwillumbah Civic Centre, Tweed Heads Civic Centre and on Council's website.

The planning proposal was advertised in the Tweed Link on the 21 August 2018 and individual adjacent landholders to the subject site were notified by letter on the 15 August 2018.

A total of 73 letters were mailed to adjacent landholders to the railway corridor.

Submissions

In total, 7 submissions were received. These comprised of 4 from government agencies and 3 from the general public, with the latter 3 consisting of 1 adjoining landowner and 2 non-adjoining landowners from elsewhere in the Tweed.

An outline of the submissions received and the officers’ planning response are provided in Table 1 below.

Table 1: Public exhibition and authority submissions received in response to Planning Proposal PP18/0003

Submission No.	Submission summary	Planning comment	Recommendation
1 (Public submission)	<ul style="list-style-type: none"> Is council proposing to construct the rail trail over Burringbar Range or is it a planning anomaly owing to the proposed zoning change inside the tunnel? 	<p>The proposed rezoning includes the land within and above the tunnel. This relates to an anomaly within the current two-dimensional planning system which does not provide a multi-layer land-use zoning system that has the capability to manage subterranean land uses separately from those that occur at ground or above ground level.</p> <p>Council is maintaining the use of the tunnel for the repurposing to a rail trail, there is no proposal to go overland and over the top of the ridge to construct a trail.</p>	No amendment to the planning proposal is recommended.
2 (Public submission)	<ul style="list-style-type: none"> The commitment of funding from the NSW and Commonwealth Governments for the proposed Tweed Valley Rail Trail is a misuse of public funds in light of other local issues including the existing condition of public roads. A rail trail land use within the existing railway corridor would be incompatible with surrounding land uses including cattle farming and in consideration of the condition of existing property boundary fencing. 	<p>Comment noted.</p> <p>Compatibility of uses is a key consideration of the Review of Environmental Factors (the approval), as determined by the design of the rail trail.</p> <p>The planning proposal against which the submission is made</p>	<p>No amendment to the planning proposal is recommended.</p> <p>Note: Project staff are making every effort to interview all adjoining landowners and to seek their input on the final</p>

Submission No.	Submission summary	Planning comment	Recommendation
		is concerned with the establishing the pathway of assessment.	design. This has and will continue to occur throughout the year and to-date has been very positive.
	<ul style="list-style-type: none"> The proposed rail trail would affect existing resident's amenity and promote undesirable behaviours such as vandalism, trespassing and theft. 	<p>Addressing amenity on a case by case assessment is part of the individual landowner consultation process discussed above.</p> <p>There are many rail trails in existence in Australia and a far greater number internationally. There is no substantive evidence based on verifiable observation or experience of rail trail users supporting those claims arising as part of the research on issues surrounding these public spaces. Staff are very aware that isolated incidents might arise and that unique features of individual properties might elevate a risk of one kind or other. Identifying risk is a key purpose of the landowner consultation.</p>	No amendment to the planning proposal is recommended.
	<ul style="list-style-type: none"> The proposed rail trail is an unsuitable development because the land is flood prone. 	Flood risk and impact assessment is a key part of the Review of Environmental Factors	No amendment to the planning proposal is recommended.

Submission No.	Submission summary	Planning comment	Recommendation
3 (Public submission)	<ul style="list-style-type: none"> The tracks and existing rail infrastructure must remain in place and not be removed to accommodate a rail trail. If the construction of a rail trail within the corridor between Murwillumbah to Crabbes Creek (and to Casino) cannot be overruled, the best process that will ensure the retention of the existing railway infrastructure for train or tram use, and the construction of the rail trail alongside the track, is supported. 	<p>The overarching reason for the LEP amendment is to enable the flexibility for alternate off-formation design. This is not practicable along a considerable length of the current railway alignment for legitimate reasons and as such the decades old railway infrastructure must be removed to allow for a new safe trail surface.</p>	<p>No amendment to the planning proposal is recommended.</p>
	<ul style="list-style-type: none"> The primary use of the existing Murwillumbah to Crabbes Creek rail corridor must remain for the purpose of rail transport and the choice of assessment process, and / or amendments to the Tweed Local Environmental Plan 2014 must not weaken the legislative framework and protections that ensure future use of the corridor for that purpose. 	<p>The railway corridor will remain and can be reused for public transport by rail, and is supported by current transportation legislation. This is not affected by the proposed LEP amendment.</p>	<p>No amendment to the planning proposal is recommended.</p>
4 (Department of Industry – Crown Lands) mailto:derek.van.leest@crowland.nsw.gov.au	<ul style="list-style-type: none"> The Department notes the objectives and intended outcomes of the proposed LEP amendment and does not wish to comment further. 	<p>Noted.</p>	<p>No action is required in relation to the planning proposal.</p>
5 (NSW Rural Fire Service) mailto:Alan.Bawden@rfs.nsw.gov.au	<ul style="list-style-type: none"> The NSW RFS has confirmed the authority does not object to the planning proposal. 	<p>The NSW RFS has raised no planning objection to the proposed LEP amendment.</p>	<p>No specific action is required in relation to the planning proposal.</p>
	<ul style="list-style-type: none"> Any future development applications for activities on the parts of the site mapped as bushfire prone land 	<p>Council officers' agree that the requirement for possible future activities related to</p>	<p>No amendment to the planning proposal is recommended.</p>

Submission No.	Submission summary	Planning comment	Recommendation
	<p>should consider the relevant bush fire requirements such as the document <i>Planning for Bushfire Protection</i>, amongst others.</p>	<p>the operation of a rail trail would be subject to the consideration of <i>Planning for Bushfire Protection 2006</i>, as is currently statutorily required.</p>	
	<ul style="list-style-type: none"> Council is recommended to develop a Rail Trail Management Plan that incorporates a bush fire risk assessment and proposed mitigation strategies. Such a document would provide certainty and consistency when assessing development applications for commercial activities within the rail trail including camping areas, etc. 	<p>Agreed – a Rail Trail Operational Management Plan is to be prepared and will include a section addressing bush fire risk from both a users' and new development application perspective.</p>	<p>No amendment to the planning proposal is recommended.</p>
<p>6 (NSW Office of Environment and Heritage)mailto:rachel.loni@environment.nsw.gov.au</p>	<ul style="list-style-type: none"> The planning proposal is supported. Offer to perform consultation during preparation of a Review of Environmental Factors for the proposed rail trail particularly in relation to the habitat potential of the existing Burringbar Range railway tunnel. 	<p>Noted.</p> <p>In addition to their support for the planning proposal the OEH has offered to be consulted by Council during the preparation of the Review of Environmental Factors. While there is no statutory requirement for this consultation the Officers' consider that consultation with OEH during the assessment of the REF would be advantageous to the Development Assessment Unit and would assist the public confidence surrounding the</p>	<p>No amendment to the planning proposal is recommended.</p> <p>No amendment to the planning proposal is recommended.</p> <p>It is recommended that OEH be consulted during the assessment of the Review of Environmental Factors.</p>

Submission No.	Submission summary	Planning comment	Recommendation
		environmental assessment of the project.	
	<ul style="list-style-type: none"> The authority notes the planning constraints associated with zoning multiple layered land parcels as is the case with the subject site - Burringbar Range railway tunnel (Part Lot 4738 DP 1231020) and recognises the current zoning is no longer applicable. 	<p>The limitations surrounding the zoning system are discussed at Issue 1 above.</p> <p>The officers' are of the view that the land should be considered for an environmental zoning when the EZone review for the western lands is considered by Council. It is hoped by that time there will be sufficient flexibility or change in the Standard (LEP) Instrument to allow subterranean uses to be efficiently regulated independently of above ground use (zoning).</p>	No amendment to the planning proposal is recommended.
7 (Transport for NSW)	<ul style="list-style-type: none"> The planning proposal is considered to strategically align with the <i>Future Transport Strategy 2056</i>. 	Noted.	No action is required in relation to the planning proposal.
	<ul style="list-style-type: none"> No objection to the subject Planning Proposal is raised. 	Noted.	No action is required in relation to the planning proposal.

OPTIONS:

Possible options for proceeding are:

1. Proceed with the planning proposal and refer PP18/0003 incorporating minor amendments that outline the public exhibition and consultation undertaken to the Department of Planning and Environment for the Plan to be made, or
2. Not proceed with Planning Proposal PP18/0003, or
3. Defer the resolution of the planning proposal PP18/0003 and seek further advice.

Option 1 is recommended by the staff.

CONCLUSION:

Following the resolution of Council on 7 June 2018 the staff prepared a planning proposal PP18/0003 to amend the *Tweed Local Environmental Plan 2014* to allow consideration of the proposed rail trail between Murwillumbah and Crabbes Creek to be carried out under Part 5 “Infrastructure and environmental impact assessment” of the *Environmental Planning and Assessment Act 1979*. The planning proposal was submitted to the Department of Planning and Environment and a gateway determination was issued. The public exhibition and agency consultation performed for the planning proposal has not identified any required amendments to the proposed LEP amendment.

Staff recommend the planning proposal be updated to include details of public exhibition and agency consultation and its consideration.

The proposed LEP amendment is considered suitable to be made.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not applicable.

b. Budget/Long Term Financial Plan:

Nil.

c. Legal:

Not applicable.

d. Communication/Engagement:

Involve/Collaborate-We will work with you on an ongoing basis to ensure your ideas, concerns and aspirations are considered. We will provide feedback on Council's decisions.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1. Planning Proposal PP18/0003 publically exhibited (ECM 5589017).

Attachment 2. Planning Proposal PP18/0003 Site Plan publically exhibited (ECM 5589008).

CONFIDENTIAL ITEMS FOR CONSIDERATION

REPORTS THROUGH THE GENERAL MANAGER IN COMMITTEE

REPORTS FROM THE GENERAL MANAGER IN COMMITTEE

C1 [GM-CM] Exhibition of the Expression of Interest for the Industry Central Land Swap

REASON FOR CONFIDENTIALITY:

This report contains commercially sensitive information associated with the Industry Central Land Swap project which should not be publicly disclosed until the commencement of the public Expression of Interest.

Local Government Act

This report is **CONFIDENTIAL** in accordance with Section 10A(2) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relating to the following: -

- (d) commercial information of a confidential nature that would, if disclosed:
 - (i) prejudice the commercial position of the person who supplied it, or
 - (ii) confer a commercial advantage on a competitor of the council, or
 - (iii) reveal a trade secret.

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Leaving a Legacy
Looking out for future generations

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Leaving a Legacy
- 1.2 Asset Protection
- 1.2.1 Floodplain Management - To manage the risk of flooding and its impacts for property owners and the community.

ROLE: **Leader**

REPORTS FROM THE DIRECTOR PLANNING AND REGULATION IN COMMITTEE

C2 [PR-CM] LEGAL ADVICE Development Application DA04/0162.03 for an Amendment to Development Consent DA04/0162 for Expansion and Amalgamation of Existing Quarries at Lot 28 DP 1079480; Pollards Road Dulguigan

REASON FOR CONFIDENTIALITY:

Local Government Act

This report is **CONFIDENTIAL** in accordance with Section 10A(2) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relating to the following: -

- (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.

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Making decisions with you
We're in this together

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 2 Making decisions with you
- 2.1 Built Environment
- 2.1.2 Development Assessment - To assess development applications lodged with Council to achieve quality land use outcomes and to assist people to understand the development process.

ROLE: Provider

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