

## TWEED SHIRE COUNCIL MEETING TASK SHEET

### User Instructions

If necessary to view the original Report, double-click on the 'Agenda Report' blue hyperlink above.

### Action Item - COUNCIL MEETING Tuesday, 28 February 2006

Action is required for Item **P6** as per the Council Resolution outlined below.

---

**TITLE:** *[PD-PC] Terranora Urban Release Area E - Draft Local Environmental Plan Amendment No. 10*

The following Committee recommendation from the Planning Committee Meeting held Tuesday 28 February 2006 was **adopted** by Council at its meeting held Tuesday 28 February 2006 at Minute No. **23**.

### **COMMITTEE DECISION:**

**Administrator Turnbull**  
**Administrator Payne**

#### **RECOMMENDED** that:

1. *Pursuant to Section 68 of the Act, forwards the draft Local Environmental Plan Amendment No 10 – Terranora Urban Release Area (Area E), as per Appendix B, to the Department of Infrastructure, Planning and Natural Resources and requests the Department to forward the Plan to the Minister so the Plan can be made in accordance with the provisions of the Environmental Planning and Assessment Act 1979.*
2. *Prepares a Development Control Plan (in accordance with the provisions of the Environmental Planning and Assessment Act 1979) to manage future development of the site.*
3. *Council shall not consent to development on the site known as Area E unless a Development Control Plan, Section 94 Plan, Master Plan/Concept Plan, Wetland Rehabilitation Plan and a Stormwater Management Plan have been approved for the land.*

**FOR VOTE - Voting - Unanimous**

Agenda Report

**TITLE:** [PD-PC] Terranora Urban Release Area E - Draft Local Environmental Plan Amendment No. 10

**ORIGIN:**

Strategic Town Planning

**FILE NO:** GT1/LEP/2000/10 Pt5

**SUMMARY OF REPORT:**

This matter was last reported to Council at its meeting on 30 November 2005 where it resolved to forward the draft plan to the Minister to be made. As a condition of the rezoning it was resolved that Council "*Enters into a Deed of Agreement with the relevant landowner to enable Lot 227, DP 755740, Fraser Drive, Terranora to be transferred to Council prior to the Plan being forwarded to the Minister.*"

After discussions with the landowner, Council officers and Council's solicitors the practicalities of this part of Council's resolution has been questioned. The objectives of the LES and LEP were to have a Rehabilitation Management Plan prepared and implemented. The wording within the written instrument already provides a statutory framework to achieve this regardless of ownership.

It is now recommended that this condition of rezoning be deleted and that the draft Plan be forwarded to the Minister without the need for Council to enter into a Deed of Agreement to have the land transferred to Council ownership.

**RECOMMENDATION:**

**That:**

4. Pursuant to Section 68 of the Act, forwards the draft Local Environmental Plan Amendment No 10 – Terranora Urban Release Area (Area E), as per Appendix B, to the Department of Infrastructure, Planning and Natural Resources and requests the Department to forward the Plan to the Minister so the Plan can be made in accordance with the provisions of the Environmental Planning and Assessment Act 1979.
5. Prepares a Development Control Plan (in accordance with the provisions of the Environmental Planning and Assessment Act 1979) to manage future development of the site.
6. Council shall not consent to development on the site known as Area E unless a Development Control Plan, Section 94 Plan, Master Plan/Concept Plan, Wetland Rehabilitation Plan and a Stormwater Management Plan have been approved for the land.

**REPORT:**

This matter was last reported to Council at its meeting on 30 November 2005 where it resolved to forward the draft plan to the Minister to be made. As a condition of the rezoning it was resolved that Council:

*“Enters into a Deed of Agreement with the relevant landowner to enable Lot 227, DP 755740, Fraser Drive, Terranora to be transferred to Council prior to the Plan being forwarded to the Minister.”*

Since this meeting, Council officers have been trying to implement this part of the resolution and have had discussions with the relevant landowner, Council’s Manager of Recreation Services and Council’s solicitors.

As a result of these discussions some issues have been raised that question the practicalities of this part of the resolution. These issues are discussed below.

1. The study area known as Area E is comprised of numerous land holdings and land ownerships. The owner of Lot 227 DP755740, has questioned the equity in transferring his land at no cost to Council given that all the other landholders will benefit from this transaction. The land owner has expressed the possibilities of establishing a S94 Contribution Plan that will ensure that all other land holders within Area E contribute to the value of the land.

There are two issues that need to be considered with this proposal, whether Council wants to enter into such a venture and secondly the legalities as to whether the Act allows for such a S94 Plan. It is understood that a S94 Plan cannot be prepared as there is no nexus between the purchase of subject land and the other land holdings within Area E. This proposition is therefore not considered viable.

2. The primary objective of the LES/draft LEP investigations and recommendations was to enable the current degraded Wetland to be rehabilitated in accordance with an approved Rehabilitation and Management Plan. Wording with the written instrument was included to ensure it was part of the statutory planning framework and a requirement prior to any development consent over the site. An extract of the draft LEP written instrument is provided below.

3. *Wetlands Rehabilitation and Management*

- (a) *Objective*

- (b) *To restore and protect freshwater wetland values and minimise breeding habitat for salt water mosquitoes and biting midges;*

1. *The Council shall not consent to development on land to which this Clause applies unless the applicant demonstrates to the satisfaction of Council that the development complies with a Wetlands Rehabilitation and Management Plan which has been prepared for wetlands within the area. Such a Wetlands Rehabilitation and Management Plan shall identify the way in which the wetland is to be restored and managed to restore freshwater wetland values and minimise breeding habitat for saltwater mosquitoes and biting midges. The plan*

*will also include details of costs and works required to undertake this rehabilitation.*

The primary objective of the LEP was to ensure the rehabilitation and management of the subject land regardless of the ownership of the land. The wording of the LEP ensures that this occurs.

3. Advice received from Council's solicitors confirms that the statutory provisions of the draft LEP provides for rehabilitation and management of subject land regardless if the land is dedicated to Council or not.
4. There is question as to whether there is a substantial benefit to be gained through dedication and Council ownership of Lot 227 versus it remaining in private ownership. The most significant benefit to be gained from having the land in Council ownership is that a significant environmental feature (SEPP 14 Wetland) is placed in public ownership. Hence, conservation and preservation of such a significant environmental asset is retained in perpetuity.

However, it can also be argued that the planning framework established for the site can also achieve this regardless of land ownership. The subject land is proposed to be zoned 7(a) Environmental Protection and is to be the subject of a Rehabilitation and Management plan approved by Council. Any use of the land would need to be in accordance with the relevant provisions of the LEP and the approved Management Plan that would provide for the conservation and preservation of the land.

Notably, a benefit to Council of not having the land transferred to Council is that it would not be responsible for the management, maintenance and liability of the land and would not be a further load on Councils maintenance resources.

Timing of the Transfer of Land to Council Ownership. Councils resolution of 30 November 2005, requires that this be effected prior to the draft Plan being sent to the Minister to be made. Council's Manager of Recreation Services has advised that, if the land is to be dedicated to Council, he would prefer the transfer occur once the land has been rehabilitated in accordance with a Management Plan and towards the final stages of subdivision so Council would not need to deal with construction impacts such as erosion and sedimentation run off and the ensuing restoration works.

#### **LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

#### **POLICY IMPLICATIONS:**

Nil.

#### **CONCLUSION:**

The transfer of the Lot 227, DP 755740, Fraser Drive, Terranora to Council ownership is not considered to be a significant component of the rezoning of the land known as Area E. The draft plan and accompanying LES primary focus was to ensure a Rehabilitation

and Management plan be developed and implemented. This can be effectively achieved through the current provisions of the written instrument of the draft Plan.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

---