

**TITLE: [PR-CM] Planning Proposal PP10/0003 - Stage 1 Part Lot 237 DP 1139108 Rous River Way, Murwillumbah (Riva Vue Estate)**

**ORIGIN:**

**Planning Reforms**

**FILE NO: PP10/0003**

**SUMMARY OF REPORT:**

This report seeks Council's consideration of a planning proposal to amend Tweed Local Environmental Plan 2000 as it relates to part Lot 237 DP 1139108, Rous River Way, Murwillumbah. The planning proposal seeks to enable part of the lot to be developed for residential purposes, with ancillary open space areas.

Preliminary assessment of the planning proposal indicates that the proposal is predominately consistent with applicable State Environmental Planning Policies and Section 117 Ministerial Directions. The proposal is generally consistent with the Far North Coast Regional Strategy, however further consideration towards the principles of this strategy will be required as part of the Stage 2 assessment, following a 'Gateway' determination approval by the Department of Planning.

The report concludes that the planning proposal is suitable for referral to the Department, and this is to be supported with an identification list of the additional supporting studies required for the Stage 2 gateway determination assessment.

**RECOMMENDATION:**

**That:**

- 1. Planning Proposal PP10/0003 for a change of land-use zone classification to enable Lot 237 DP 1139108 to be developed for the purposes of a *low density residential estate of similar character to the approved adjoining Riva Vue subdivision* be supported in principle and that the proposal be referred to the Department of Planning for a gateway determination under section 56 of the *Environmental Planning and Assessment Act 1979*.**
- 2 The applicant of the planning proposal PP10/0003 is to be advised that the actual rezoning classification of the land, if supported by Council, will be determined following assessment of any detailed site studies required as part of the Stage 2 gateway determination process.**

**REPORT:**

On 1 July 2009 the Environmental Planning and Assessment Amendment Act 2008 and Environmental Planning and Assessment Amendment (Plan Making) Regulation 2009 implemented procedural changes to the way local environmental plans are prepared and processed.

A further more detailed discussion on the new Part 3 (Plan Making) process is provided in the 'Boyd's Bay Garden World Planning Report, which precedes this Item on today's Council's Business Agenda for 20 July 2010.

The format of this Council report is based on the format provided by the legislation and DOP guidelines for planning proposals.

**AGRICULTURAL LAND STATUS – FARMLAND PROTECTION STATUS**

The subject lands are currently zoned 1(b2) Agricultural Protection under the Tweed LEP 2000, with a prescribed minimum lot size of 40ha.

The land is not classified under the Farmland Protection Project (FPP) or caught by the s 117(2) Ministerial Directions, in particular Direction 5.3 (Farmland of State and Regional Significance on the NSW Far North Coast), as any of the following:

- I. State significant farmland
- II. Regionally significant farmland
- III. Significant non-contiguous farmland.

The FPP seeks to protect important farmland from urban and rural residential development by mapping farmland and developing planning principles. Ultimately its aim is to keep agricultural land available for farming and to minimise farming/residential land-use conflicts.

The Northern Rivers Farmland Protection Project Final Recommendations Report 2005 states that these lands should generally not be considered for land-use change through rezoning, and is implemented to that effect through the Ministerial s 117(2) Directions.

The subject land is identified on the FPP maps as "other rural" land notwithstanding the zone classification under the Tweed LEP. There are no similar restrictions either under the FPP recommendations or the Ministerial Directions applying to this classification.

Notwithstanding that the agricultural aspect of subject land is not protected beyond the Tweed LEP zone classification there is still a substantial need for the agricultural suitability of the land to be thoroughly assessed in order to properly underpin any determination in support of a change in rezoning.

This aspect of the assessment is also a necessity in responding to the Ministerial Direction 117(2) 1.2 (Rural Zones) and 1.5 (Rural Lands), and subsequently, SEPP (Rural Lands) 2008 which required comprehensive assessment of the rural land status against the rural land zoning. This report demonstrates the need for further assessment of this issue as part of the Stage 2 planning proposal evaluation process.

## **SITE AND PLANNING HISTORY**

There is an extensive site history outline in the report accompanying the planning proposal, detailing previous submissions for rezoning of this land since 2007. However these requests, due to the Council's position were not progressed beyond s.54 stage. Land adjoining the subject land to the east has had the benefit of rezoning, and is now a low density residential subdivision known as Riva Vue (both 2(a) and 2(c)) approved under 05/0308, these stages are partially constructed.

A road has already been constructed within the subject site. The proponent forwards that this road was constructed to link Joshua Street at the northern boundary of the site to the Murwillumbah Sewerage Treatment Plant. Rous River Way will ultimately connect to the West End Street Extension to form part of the Byangum Road bypass.

Lot 237 is located to the west of Murwillumbah Town Centre, adjacent to the Rous River. The site area is approximately 14ha in total and is currently zoned 1(b2) – Agricultural Protection.

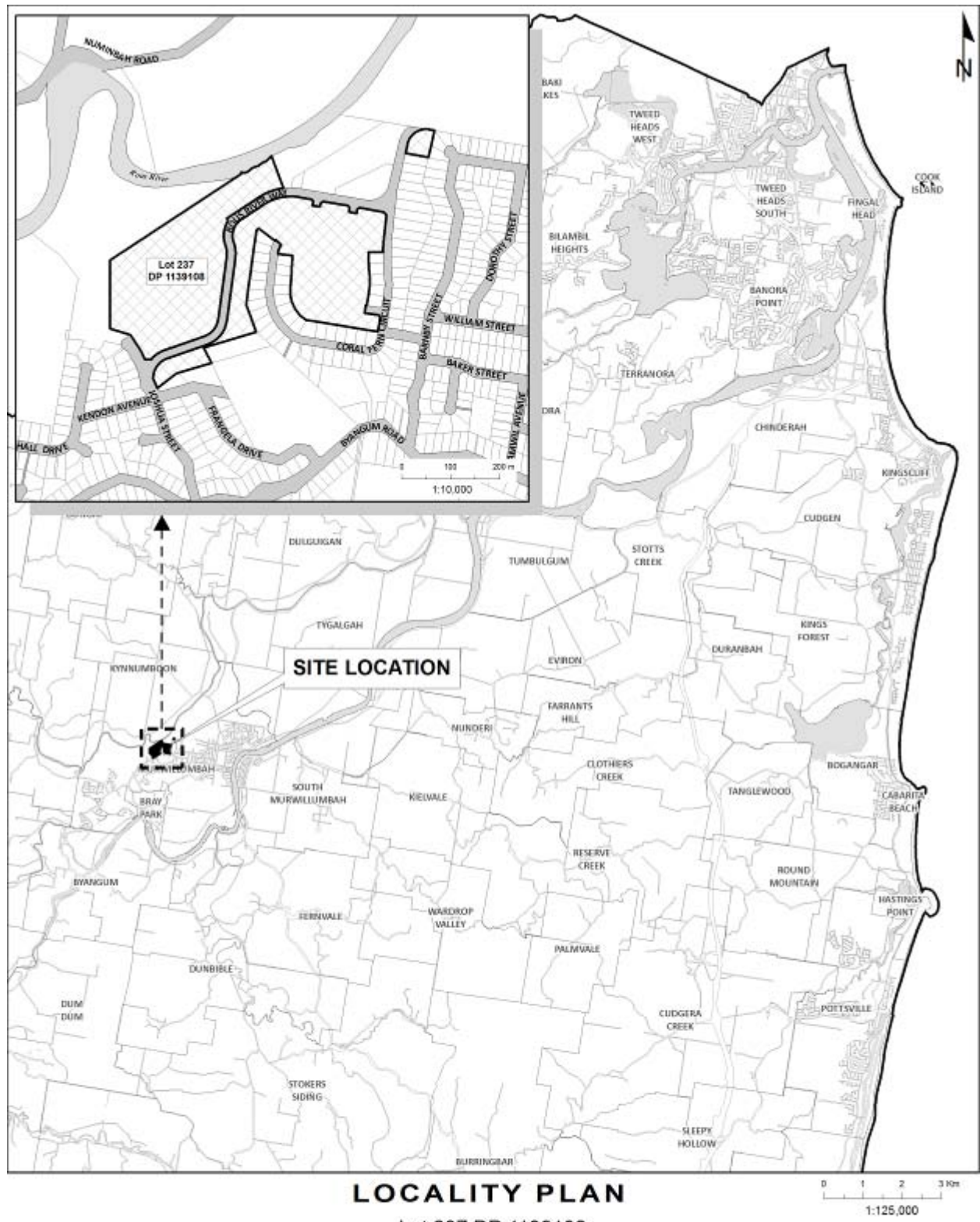
The subject site abuts a new residential subdivision development that was approved in 2005 (DA05/0308). A new road extension to Rous River Way has been constructed and dedicated to Council as part of that development. Part of the road and the batter support for it are located in the subject agriculturally zoned land.

A report to the Council Meeting of October 2008 reported unlawful filling of part of the site, which was later resolved by way of s 96 development application modification to the parent applicant DA05/0308.

The Council's consideration of the modification application raised the issue of development within the agriculturally zoned land and was the subject of significant debate. This planning proposal is likely to raise similar concern or issue within the community as did that application.

The status of the lands agricultural classification is discussed above.

**FIGURE 1: SITE LOCALITY PLAN**



**LOCALITY PLAN**  
 Lot 237 DP 1139108  
 Rous River Way, Murwillumbah

Filename: z:\esr\planning\mxd\AAP\_BSW\_SitePlan.mxd

Author: J.Bachelor - Planning Reforms Unit

Date Printed: 24 June, 2010

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Coordinate System - MGA Zone 56  
 Datum - GDA 94



Cadastral: 25 June, 2010  
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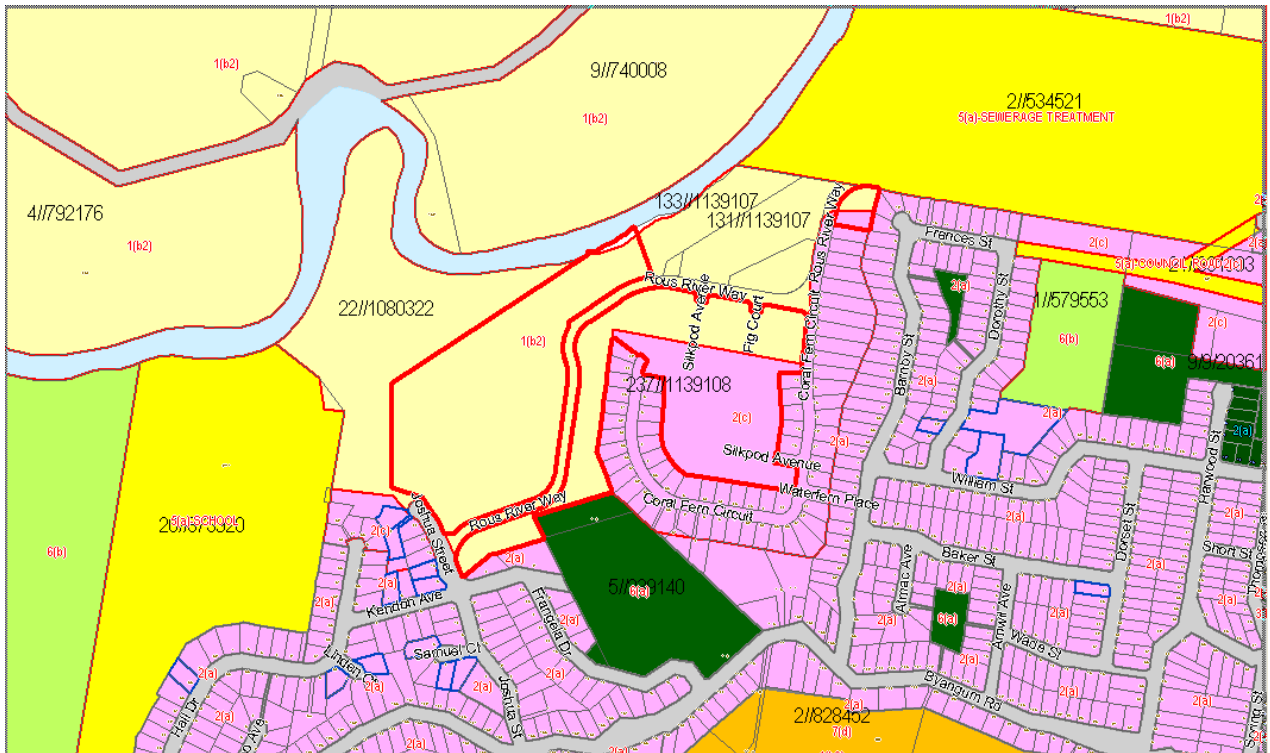
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FIGURE 2: AERIAL PHOTO



FIGURE 3: LEP 2000 ZONE MAP



## THE PLANNING PROPOSAL

### Part 1 A Statement of the Objectives or Intended Outcomes of the Proposed Local Environmental Plan

This is intended to be a concise statement of what is planned to be achieved, and will eventually form the basis for the drafting of the LEP.

The planning proposal describes its intended outcomes as follows:

*'The objective of this planning proposal and any Draft Local Environmental Plan is to enable part of Lot 237 DP1139108 to be subdivided to create a low density residential estate of a similar character to the approved adjoining Riva Vue subdivision.'*

The NSW Department of Planning's 'A Guide To Preparing Planning Proposals' states that the objectives or intended outcomes constitute the actual 'proposal' and if at any stage they are varied during the course of the planning proposal, the entire amended planning proposal will need to be resubmitted to the Minister to enable a decision to be made as to whether to issue a revised gateway determination. In light of these provisions, whilst the submitted planning proposal contains draft proposed zonings (which are discussed within Part 2 of this report) the assessment of the proposal should have greater regard to the above intended outcomes statement as a variety of zones could be used to accommodate the desired outcome.

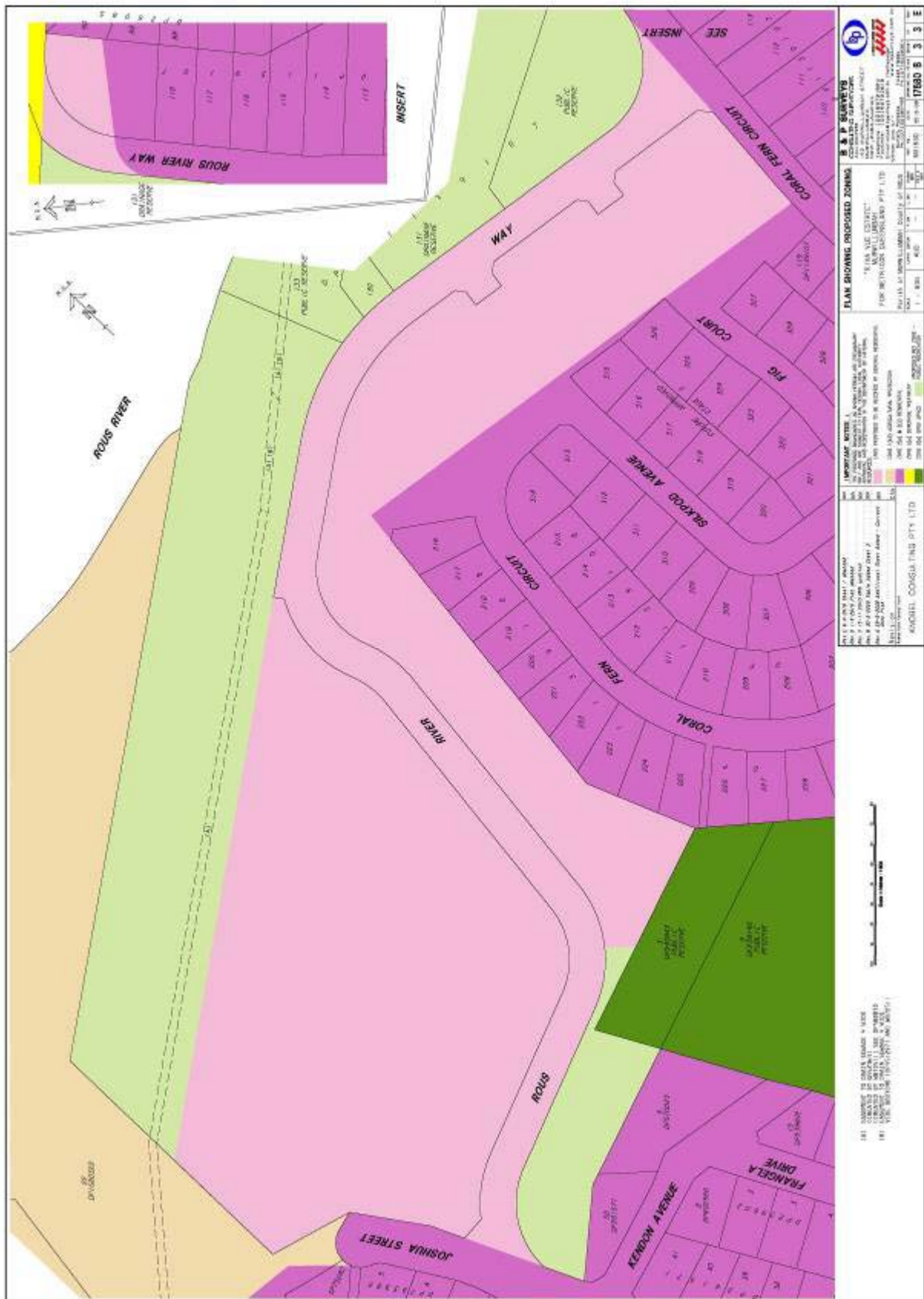
### Part 2 Explanation of the Provisions

To enable the prescribed objective, the planning proposal seeks to amend the zoning map of the Tweed LEP as per Figure 4 . A basic summary of the changes sought is contained in Table 1 below:

**Table 1 – Desired changes to the Tweed LEP 2000**

<b>Property (Lot/Sec/DP)</b>	<b>Tweed LEP 2000 Zoning</b>	<b>Draft Tweed LEP 2010 Zoning</b>	<b>Proposed Zoning</b>
237//113910 8	1(b2) – Agricultural Protection	RU1 Primary Production	R1 General Residential

FIGURE 4: PROPOSED ZONING MAP



### **Part 3 Justification for the Proposal**

#### ***Section A – Need for a Planning Proposal***

##### ***Is the planning proposal a result of any strategic study or report?***

The planning proposal is not a result of any specific or adopted strategic study or report prepared at either a local or regional level. The subject site is not located within the existing urban footprint (Town and Village Growth Boundary) identified within the Far North Coast Regional Strategy (FNCRS).

##### ***Is the planning proposal the best means of achieving the objectives or intended outcomes or is there a better way?***

Given the subject site falls outside the town and village growth boundary of the FNCRS and is zoned Rural, rezoning of this land should not be undertaken until the adoption of a Rural Lands Strategy by Council. However, until this is completed, nothing prohibits a proponent from lodging a planning proposal over any land within the Shire. For the proponent to achieve their current objectives, a planning proposal process is the best means at the present time. SPEAK WITH IAIN

##### ***Is there a net community benefit?***

The proponent has made an assessment of the net community benefit associated with the subject planning proposal. A preliminary review of this has been undertaken. Further assessment of this will be required as part of the Stage 2 process.

#### **Section B - Relationship to Strategic Planning Framework**

##### ***Is the Proposal Consistent with the Objectives and Actions Contained Within the Applicable Regional or Subregional Strategy (including the Sydney Metropolitan Strategy and Exhibited Draft Strategies)?***

Preliminary review of the FNCRS indicates that the defined Town and Village Growth Boundaries in the strategy are intended to accommodate the Region's urban housing and employment needs until 2031.

The Strategy states:

*“These areas are to accommodate uses including housing, tourism, industry, business, infrastructure, community facilities and open spaces. Where demonstrated by a local environmental study that a minor adjustment to the Town and Village Growth Boundary is necessary with it, some minor variations may be considered. The strategy goes on to state that ‘any development proposed for Greenfield sites in non coastal areas that is located outside the Town and Village Growth Boundary will be subject to satisfying the Sustainability Criteria.’”*

Whilst the subject site is not located within the Town and Village Growth Boundary, it does nevertheless abut the boundary. The FNCRS does not prohibit investigation of sites outside this boundary in non-coastal areas (West of the Pacific Highway) being considered for urban development. Whilst a more detailed assessment will be required



in subsequent stages of the planning proposal process, there is nothing within the Strategy to prevent this planning proposal progressing to the gateway determination.

***Is the Planning Proposal Consistent with Applicable State Environmental Planning Policies?***

Preliminary review indicates that the planning proposal is generally consistent with applicable SEPPs. Further assessment and consultation will be required within Stage 2 with respect to (but not limited to) SEPP (North Coast REP 2008), SEPP 55, SEPP (Rural Lands) 2008.

***Is the Planning Proposal Consistent With Applicable Ministerial Directions (Section 117 Directions)?***

Preliminary review indicates that the planning proposal is generally consistent with applicable s117 Directions, further review and consultation will be required in respect to certain directions, however there is nothing within these that impedes progression of the application to Stage 2.

**Section C - Environmental, Social and Economic Impacts**

***Is There any Likelihood That Critical Habitat, Threatened Species, Populations or Ecological Communities, or Their Habitats, Will be Adversely Affected As a Result of the Proposal?***

A review of the planning proposal indicates that there are no significant flora and fauna constraints at the site. The proponent has submitted a Flora and Fauna Assessment that was completed in 2005. It acknowledges that adequate buffer areas will need to be determined however an updated flora and fauna assessment will need to be requested and provided as part of the Stage 2 assessment.

***Are There Any Other Likely Environmental Affects As a Result of the Planning Proposal and How Are They Proposed to be Managed?***

Preliminary review indicates that the proposal would not likely result in any other significant environmental impacts, however further detailed consideration of studies will be required, particularly an updated Flora and Fauna Assessment. Ultimately the true extent will not be ascertainable until the more detailed assessment as part of Stage 2 is undertaken.

***How Has the Planning Proposal Adequately Addressed Any Social and Economic Effects***

The proponent has addressed the social and economic impacts of the development within the planning proposal a preliminary review of this assessment deems the proposal satisfactory to move through to Stage 2 for further assessment. It is noted however that the proponent makes an assessment of potential s.94 contributions, per allotment, which now due to Ministerial Directions (specifically in relation to s.94 capping) not achievable. Further assessment regarding s.94 contributions at the site will be undertaken in Stage 2, however it should be noted for reference purposes that \$20,000 cap implemented by the State Government may impact on the proposal.

***Other Environmental, Social and Economic Considerations resulting from internal referrals.***

**Strategic and Structural Planning Considerations**

A preliminary review of the proponents planning submission has been reviewed with no significant issue being raised with respect to progression of the proposal to the gateway determination and Stage 2 assessment. However, as part of Stage 2, the proponent will be required to update the relevant studies submitted to date, to reflect contemporary Federal, State and local policy positions, as well as more accurately reflect the current rezoning proposal in its own right, as opposed to the wider Riva Vue rezoning area, a portion of which is now being developed.

Early discussion with the proponent regarding the assessment of a number of matters will need to be undertaken and this is likely to be based on the broader planning framework for the subject rezoning, including, but not limited to:

- The assessment by the proponent regarding the rezoning of agricultural land in the context of the FNCRS, relevant SEPP's and s117 Directions and local policy framework.
- The overall framework of the site, a DCP, structure plan, masterplan or the like to canvass areas such as lot and road layout, yield, buffer zones, public open space and connectivity;
- Clearer definition of the boundary area of the subject application, indicative plans includes Council Lots (130-133: 2 x Public Reserves, drainage reserve and a sewer pump station) within the rezoning map and other diagrams submitted. A cautionary approach is applied here to canvass Council's position with regard to future applications;
- S94 Developer contributions in the context if the capped maximum amount per lot;
- Strategic consideration of proposed land forming, stormwater management, water and sewer servicing, traffic and access and the like.

**Traffic:**

The proposal was assessed by Council's Traffic and Transport Engineer and Council's Development Assessment Engineer and no major concerns were raised in regard to access and traffic management in principle. It was requested that as part of the Stage 2 assessment:

*'the proponent submit a traffic assessment of the proposal demonstrating the ability of the local road network to cope with increased traffic load and any adverse impact that may result. As part of this, the proponent will be required to prepare a road layout plan for the proposal that depicts the appropriate lot layout as per TSC A1 and A5'.*

**Engineering and infrastructure:**

The planning proposal was referred to Council's Strategic and Assets Engineer and Council's Development Assessment Engineer and no objection was raised to the planning proposal progressing the next stage. The water and sewer supply are deemed appropriate for progression to Stage 2. However, as part of Stage 2, Council will require

the proponent to prepare a Water and Sewer Servicing plan for the site to ensure investigation of the capacity of existing water and sewer servicing infrastructure in the area, where and how to connect to existing systems, and determining if any major upgrades area required.

### **Flooding, Stormwater and Landforming:**

#### **Flooding:**

The planning proposal has been referred to Council's Planning and Infrastructure Engineer and Council's Development Assessment Engineer. The following response outlines comments raised:

*"The subject land is flood liable, and must be filled to make it suitable for future residential subdivision development. DCP-A3 has recently been revised following an update to the Tweed Valley Flood Study. Flood mapping shows that the current 100 year ARI flood level is RL 4.9m AHD, with a potential increase due to climate change up to RL 5.1m AHD.*

*Under DCP-A3, the climate change design flood level of RL 5.1m AHD applies, as the future residential subdivision will be defined as a "greenfield" development, as it exceeds 5 hectares in area, and expands on the existing stages of the Riva Vue Estate. This corresponds with the applicant's fill proposal, and requires up to 3m of fill to be applied to the site.*

*A flood impact assessment has been provided with the planning proposal (Annexure 6). Written in 2004, it relates to the impacts of filling the eastern portion of the Riva Vue Estate, and does not include the subject areas in its assessment (refer Figure 3.2, page 3-3). A 2-dimensional flood model is now also available to the proponents to better model the impacts of fill. As such, in order for the rezoning to be supported, a new flood impact assessment should be provided, to demonstrate no significant adverse impact on local flood behaviour or adjoining land.*

*The site adjoins high land above the probable maximum flood level (PMF = RL 9.3m AHD), so emergency response for the residential subdivision can be adequately managed by the provision of evacuation routes for floods exceeding the 100 year ARI event.*

#### **Stormwater:**

*An overall Stormwater Management Plan must be prepared for the site, in accordance with Council's 'Tweed Urban Stormwater Quality Management Plan', DCP A5 and Development Design Specification D5. Matters to be addressed include (but are not limited to):*

- *Discharge point(s) for the site – is it intended to utilise the existing constructed wetland (address existing capacity and ability for expansion if so) or seek a separate discharge point to the Rous River?*
- *Water quality issues to be addressed for any new discharge point to the Rous River.*

- *Utilise Water Sensitive Urban Design methods when nominating the stormwater design philosophy for the site.*

The proponent should note the following, which will need to be addressed as part of the Stage 2 assessment.

*Trunk Drainage open channels. The proposal has ignored the consequences of proposing residential lots over an area that has an existing large open drainage channel – which is also under-performing (blocking up) as a result of prior subdivision works (channel re-routing). The applicant will be required to investigate the cause of existing drainage problems that currently affect the site, devise a resolution that is acceptable to Council (likely to be an open channel with low-flow pipes - within easements **or** a Drainage Reserve), incorporate same in any DCP being created for the site, and implement it.*

### **Ecology:**

A full review of the Flora and Fauna Assessment will be undertaken within Stage 2 of the assessment process. However the following was provided as comment:

*“A preliminary review of the planning proposal has been undertaken an NRM do not have any objections or additional requests for information at this time. The most important issues with respect to natural resource management on the site will be related to management of the riparian buffer along the Rous River. This should be a minimum of 50m, appropriately planted with a suite of native species and maintained by the applicant.”*

It is noted that the Flora and Fauna Assessment submitted with the Planning Proposal was prepared in 2005. It will be necessary that an updated Flora and Fauna Assessment in accordance with current Federal and State legislation be submitted as part of the Stage 2 assessment.

### **Contamination**

Council’s Environment and Health Officers have requested additional information be provided in accordance with SEPP 55 and Section 3.4 of Council’s Contaminated Land Policy as part of the Stage 2 process.

### **Social and economic impacts:**

#### **Section D – State and Commonwealth Interests**

#### ***Is There Adequate Public Infrastructure for the Planning Proposal?***

Preliminary review indicates that adequate water and waste water capacity is available to the subject site, as well as electricity and telecommunication. Further consideration to the requirement for educational and health infrastructure will be undertaken as part of Stage 2.

#### ***What are the Views of State and Commonwealth Public Authorities Consulted In Accordance With the Gateway Determination***

The application is yet to proceed through the gateway and has not yet been referred to any State or Commonwealth Authorities this will occur as part of the Stage 2 process.

#### **Part 4 – Community Consultation**

The Department of Planning's guide to preparing planning proposals addresses the process requirements for determining the level of community consultation which should be specified when seeking a Gateway Determination. It can, in theory, be specifically tailored however the general guide is a 14 day exhibition for a low impact proposal and a 28 day exhibition for all other proposals.

Based on the scale of this planning proposal, Council officers are of the view that a minimum 28 day exhibition period should be sought.

#### **CONCLUSION:**

The preliminary Stage 1 review indicates that there is sufficient strategic context and certainty to warrant Council's resolution to amend the Tweed LEP and to submit the planning proposal for a gateway determination with Department of Planning.

In addition, the Department is to be advised of the need for further detailed studies relating to the proposal that includes, but may not be limited to:

1. An updated flood impact assessment that utilises Council's Tweed Valley Flood Model 2009 to demonstrate no significant adverse impact on local flood behaviour or adjoining land;
2. an updated Flora and Fauna Assessment in accordance with current Federal and State legislation, specifically referencing the current Planning Proposal area;
3. Water and Sewer Servicing plan for the site to ensure investigation of the capacity of existing water and sewer servicing infrastructure in the area, where and how to connect to existing systems, and determining if any major upgrades area required.
4. An overall Stormwater Management Plan must be prepared for the site, in accordance with Council's 'Tweed Urban Stormwater Quality Management Plan', DCP A5 and Development Design Specification D5. Matters to be addressed include (but are not limited to):
  - Discharge point(s) for the site – is it intended to utilise the existing constructed wetland (address existing capacity and ability for expansion if so) or seek a separate discharge point to the Rous River?
  - Water quality issues to be addressed for any new discharge point to the Rous River.
  - Utilise Water Sensitive Urban Design methods when nominating the stormwater design philosophy for the site.
5. Address the provisions of SEPP 55 and Council's Contaminated Lands Policy;

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

If adopted, the recommendation contained within this report would result in a resource implication for the Planning Reforms Unit, however Council has a fees and charges structure to enable the application to be managed internally or through external consultants and ensures cost recovery.

**POLICY IMPLICATIONS:**

Nil.

**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](http://www.tweed.nsw.gov.au) (from 8.00pm Wednesday the week before the meeting) or visit Council's offices at Tweed Heads or Murwillumbah (from 8.00am Thursday the week before the meeting) or Council's libraries (from 10.00am Thursday the week of the meeting).*

Nil.

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