

Planning Proposal
Pottsville Employment Land
Lot 12 DP 1015369 Kudgerie Avenue, Cudgera Creek

Draft LEP Amendment Number 92

August 2011

File PP11/0002

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Introduction

Purpose

This proposal seeks to support a request from Planit Consulting for Council to prepare a Planning Proposal for the rezoning of Lot 12 DP 1015369 Kudgerie Avenue, Cudgera Creek, currently zoned 1(a) Rural, to 4(a) Industrial and 7(b) Environmental Protection (Scenic/Escarpment).

Council resolutions

This site has been the subject of ongoing investigations prior to lodgement of the request to prepare this proposal, and has been reported to Council on a number of occasions as the selected resolutions below indicate:

On 16 August 2011 Council resolved that:

Copy of Council resolution to be added here once endorsed by Council

The full report can be seen in Attachment 1.

On 15 March 2011 Council resolved that:

1. Council endorses the preparation of a planning proposal for the rezoning of the site for industrial and environmental protection purposes consistent with Council's resolutions of 17 August 2010;
2. The proponent be requested to confirm their commitment to the provision of a private waste water system by entering into a Voluntary Planning Agreement, to be prepared by Council's Solicitors at the proponents' cost, pertaining to their commitment to provide a stand-alone private wastewater disposal utility scheme and the obtainment of a licence under the Water Industry Competition Act 2006 (WIC Act) administered by the Independent Pricing and Regulatory Tribunal (IPART);

The full report can be seen in Attachment 2.

On 17 August 2010 it was resolved that Council:

3. Endorses that Council Officers negotiate with the landowner for the restoration, revegetation, contributory off-set planting, maintenance, and protection of vegetation, as necessary, through a legally binding agreement, and that a satisfactory resolution of these matters be concluded prior to the gazettal of any rezoning under GT1/LEP/2000/85 (Amendment No. 85);
4. Endorses that land identified as unsuitable for rezoning for urban purposes be rezoned to reflect the environmental qualities and constraints of the land; and
5. Endorses that the Applicant be advised of Council's concern over the proposed method of waste water treatment proposed and the need for the Applicant to demonstrate certainty of all aspects of the scheme to Council's satisfaction.

On 15 December 2009 it was resolved, in part, that:

3. The rezoned land is to be rolled over into the new Local Environmental Plan as Industrial Land in accordance with its designation in the Far North Coast Regional Strategy.
4. That the restoration, regeneration, contributory off-set planting and protection of significant vegetation and or areas be included in any rezoning proposal on the land and in any legal proceedings for orders to remedy any established breach of the Tweed Tree Preservation Order.

Part 1 Objectives and intended outcomes

Objective

This planning proposal seeks to facilitate the rezoning of Lot 12 DP 1015369, Kudgerie Avenue, Cudgera Creek (West Pottsville) for the purpose of employment generation, industrial, as identified in the Far North Coast Regional Strategy 2006-2031.

Intended outcome

The reclassification of Lot 12 DP 1015369, Kudgerie Avenue, Cudgera Creek from 1(a) Rural to 4(a) Industrial and 7(d) Environmental Protection (Scenic/Escarpment) under the Tweed Shire LEP 2000, in accord with the opportunities afforded and constraints affecting the site, and as reported in this proposal.

Site context and setting

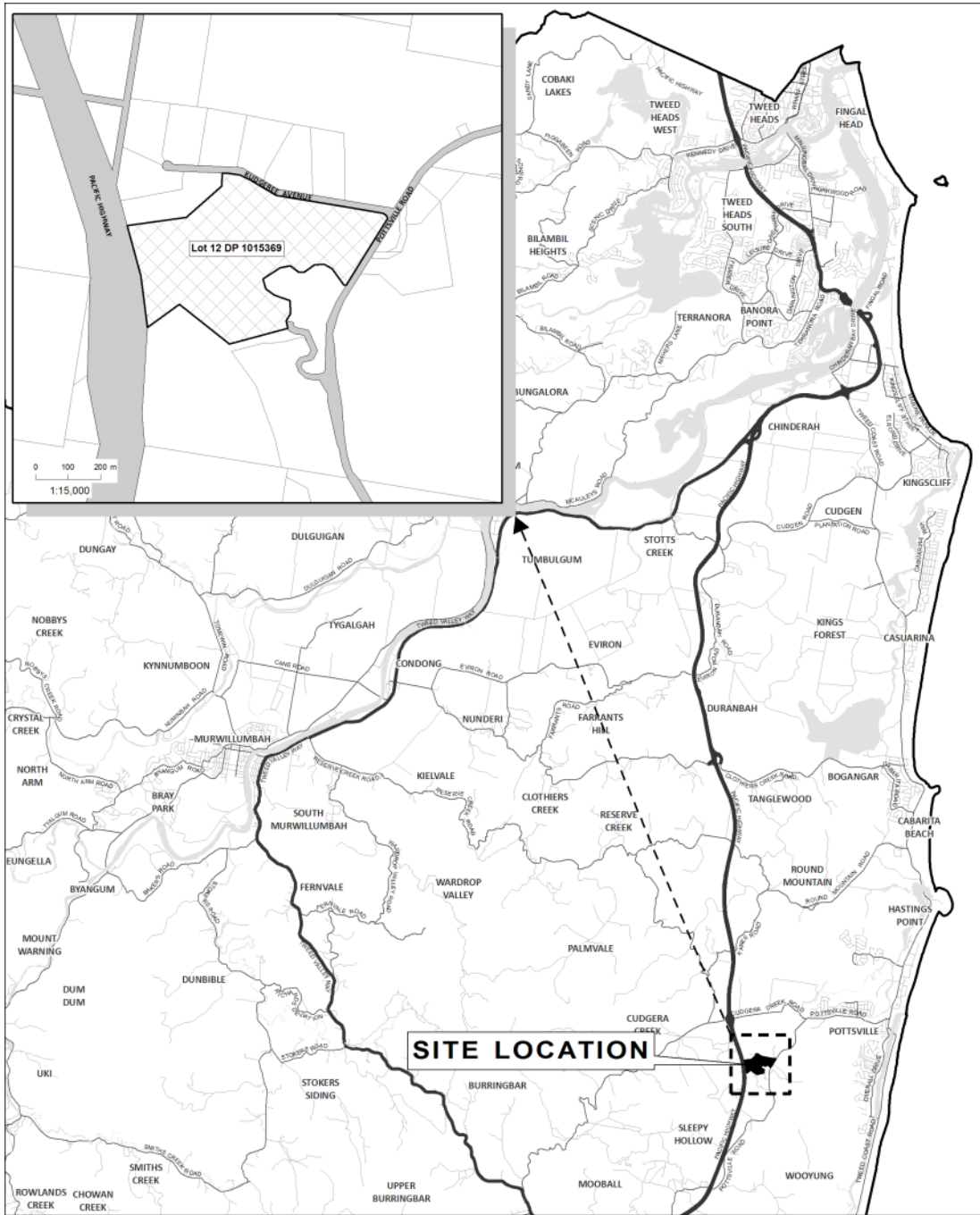
The site is known as Lot 12 DP 1015369, Kudgerie Avenue, Cudgera Creek, located approximately 2.5 kilometres west of the Pottsville township, as seen in Figure 1 – Locality Plan. Figure 2 is an aerial view of the site showing general features and proximity to local infrastructure.

With an overall area of 22.69 hectares, the site adjoins the Pacific Highway to the west, Kudgerie Avenue to the north, and the Mooball-Pottsville Road to the east. The site also adjoins Council-owner land to the east which is utilised for quarry and water supply purposes.

The existing landuse is grazing with scattered trees on the steeper southern slopes and a stand of mature remnant vegetation located on the central drainage line as seen in Figure 3 – View looking south from Kudgerie Avenue. The southern slopes are extremely steep, vegetated and highly visible. The site is traversed by two drainage lines, one entering from the west under the Pacific Highway, a grassed waterway, and the second, entering from the south, rimmed by remnant vegetation in the centre of the site, but free of trees elsewhere. The site is clearly visible from the Pacific Highway and residential land to the north-east, including views from Koala Beach Estate.

The site has been identified in the Far North Coast Regional Strategy 2006 – 2031 as Employment Lands with indicative high level constraints, and has been identified as part of a much larger Potential Employment Lands release area known as 'Area 7' in Council's Tweed Urban and Employment Land Release Strategy 2009. The latter is to be presented to the Department of Planning and Infrastructure for inclusion in the current revision of the Far North Coast Regional Strategy 2006.

The site is elevated and not affected by the 1 in 100 year flood event, only being affected by local runoff during storm events.



Locality Plan

Lot 12 DP 1015369
39 Kudgerees Avenue, Cudgera Creek

Figure 1

| | | | | |
|---|--|--|---|--|
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|---|--|--|---|--|

Figure 1: – Locality Plan



SOURCE: Aerial imagery taken October 2009 by Fugro Spatial Pty Ltd

Aerial photography can be purchased online from Fugro Spatial Pty Ltd. at: <http://www2.fugroworld.com>

Aerial Photo - taken October 2009

Lot 12 DP 1015369
39 Kudgerie Avenue, Cudgera Creek

Figure 2

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Figure 2: - Aerial view of the site

Planning controls – Present zoning

The site is currently zoned 1(a) Rural as seen in Figure 4 – Current zoning.

Adjoining land in all directions is currently zoned 1(a) Rural but does form part of a larger proposed urban and employment land release proposed or land already included in the Far North Coast Regional Strategy 2006 and the Tweed Urban and Employment Land Release Strategy 2009.

Planning controls – Draft Tweed LEP 2010 zoning

In recognition of the high conservation status of vegetation on the site as defined in the Tweed Vegetation Management Strategy 2004, and as protected by Council's Tree Preservation Order, it was originally proposed to include vegetation on the site within the E2 Environmental Conservation Zone, as shown in Figure 6 Draft Tweed LEP 2010 - Proposed amendment, as shown in Figure 5 Draft Tweed LEP 2010 – Zoning. However, recent investigations and negotiations with the proponent and landowner have resulted in an increase in the area of land proposed for environmental protection as discussed below.

Planning controls – Proposed amendment

It is proposed to amend the Tweed LEP 2000 and create zones more in keeping with the physical and biological attributes of the site, and in accord with the identified potential of part of the site for employment generating purposes.

This proposal seeks to retain and rehabilitate native vegetation on the steeper southern section of the site, to be protected within a 7(d) Environmental Protection (Scenic/Escarpment) zoning, and for the lower slopes adjoining Kudgeree Avenue to be zoned 4(a) Industrial, as shown in Figure 6 Tweed LEP 2000 – Proposed amendment.

Background

The site is heavily constrained and has required significant investigation to ensure that any proposal for industrial development takes into consideration the limitations to development presented by the site's specific topographical and environmental constraints.

Previous reports to Council have highlighted the constraints affecting the site, which included:

- Steep and highly visible slopes,
- Native vegetation protected under Council's tree Preservation Order,
- Natural watercourses,
- Aboriginal cultural heritage item (Scar tree),
- Close proximity to the Pacific Highway,
- No access to Council's waste water management system,
- Access to the Pacific Highway and capacity related issues at the Cudgera Creek intersection, and
- Visual impact, both relating to the Pacific Highway and view fields from the north, and across the floodplain.

As a result of negotiations with the landowner and developer following alleged breach of Council's Tree Preservation Order 2004 and damage of an Aboriginal heritage scar tree, Council resolved to pursue negotiations to protect and rehabilitate the remaining vegetation

and scar tree. This has resulted in an increase in the area of land now to be included in the protected land on the southern boundary, and refined the footprint of potential development as shown in Figure 7.

While the majority of constraints can be managed at the development application stage, the issue of waste water disposal remains unresolved and is critical for the potential of the site for employment generating purposes to be realised. The site is not connected to Council's reticulated waste water system, and is likely to remain an isolated site for many years.

Because of the ceiling placed on the amount of land which can be included in the Far North Coast Regional Strategy, were this site to remain undeveloped, it would sterilise other land which might be brought into production more readily. Council is therefore keen to ensure that should the rezoning proceed, that development of the land will occur, and should this not prove to be possible, that options exist for Council to switch its focus to other land more easily developed.

As the most significant outstanding constraint to progressing the rezoning, Council resolved to endorse the preparation of a planning proposal and to request the landowner and proponent to confirm their commitment to the provision of a private waste water system by entering into a Voluntary Planning Agreement to demonstrate their commitment to provide a stand-alone private wastewater disposal utility scheme and the obtainment of a licence under the Water Industry Competition Act 2006 (WIC Act) administered by the Independent Pricing and Regulatory Tribunal (IPART). Should a licence not be obtained, Council will retain the option to pursue alternative sites in preference to this one.



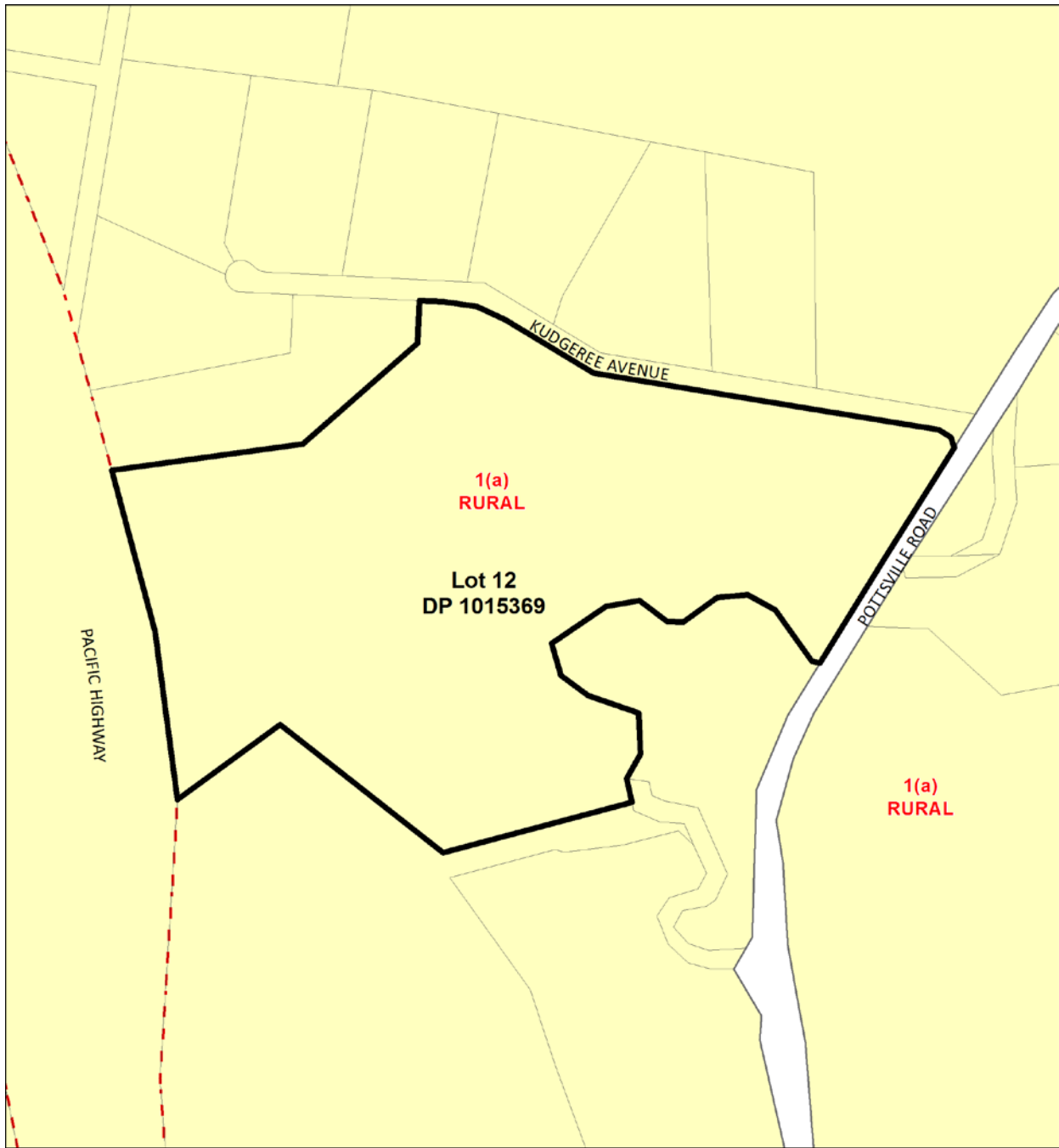
Figure 3a: View looking west into the site from the Kudgeree Avenue intersection



Figure 3b – View looking south west from Kudgerie Avenue across the western section of the site



Figure 3c: Closer view of the western boundary with the Pacific Highway showing approximate location of proposed development envelope



Tweed Local Environmental Plan 2000
 Lot 12 DP 1015369
 39 Kudgerie Avenue, Cudgera Creek

Figure 4

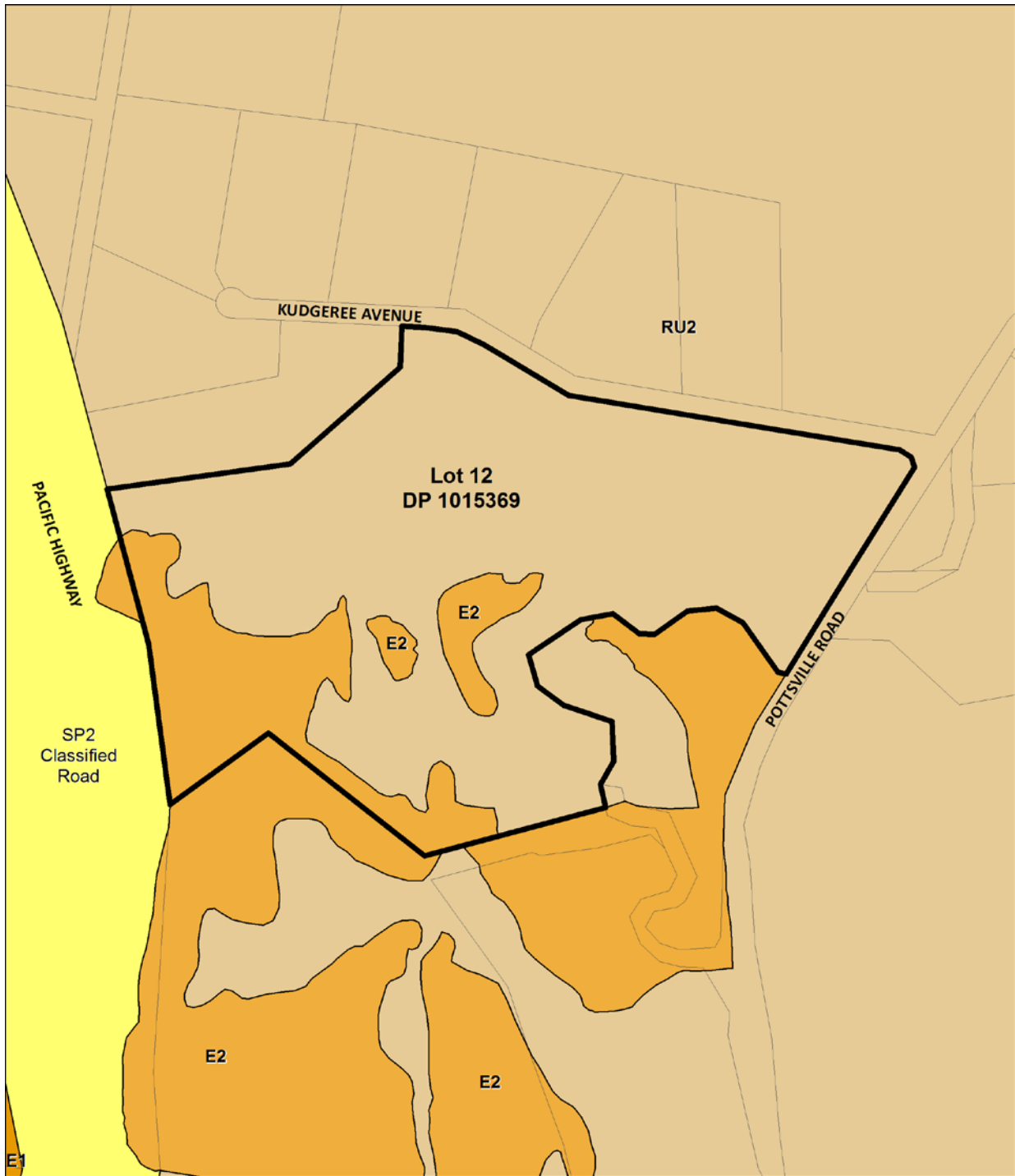
| ZONING | RESIDENTIAL | BUSINESS | INDUSTRIAL | ENVIRONMENTAL PROTECTION | NATIONAL PARKS & NATURE RESERVES |
|-------------------------------|---------------------------------|--|---------------------|---|---|
| RURAL | 2(a) Low Density Residential | 3(a) Sub-Regional Business | 4(a) Industrial | 7(a) Environmental Protection (Wetlands and Littoral Rain-forest) | 8(a) National Parks and Nature Reserves |
| 1(c) Rural living | 2(b) Medium Density Residential | 3(b) General Business | SPECIAL USES | 7(d) Environmental Protection (Scenic / Escarpment) | DEFER |
| 1(b1) Agricultural Protection | 2(f) Tourism | 3(c) Commerce & Trade | 5(a) Special Uses | 7(e) Environmental Protection (Coastal Lands) | defer |
| 1(b2) Agricultural Protection | 2(c) Urban Expansion | 3(d) Waterfront Enterprise | OPEN SPACE | 7(f) Environmental Protection (Coastal Lands) | |
| | 2(d) Village | 3(e) Special Tourist (Jack Evans Boat Harbour) | 6(a) Open Space | 7(g) Environmental Protection (Habitat) | |
| | 2(e) Residential Tourist | | 6(b) Recreation | | |

| ADDITIONAL CONTROLS | Clause 41 (Heritage Conservation Area) | Clause 52 (Minimum Lot Sizes) | Clause 53 (Schedule 3 Item) |
|--|---|---------------------------------|-----------------------------|
| Clause 37 (Transmission Line Corridor) | Clause 52 (Existing and Future Dam Areas) | Clause 52 (Stormwater and Fill) | Clause 52 (Pottsville) |
| Clause 38 (Future Roads) | | | |

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 Author: J.Batchelor - Planning Reforms Unit
 Date Printed: 29 July, 2011

Figure 4: Tweed LEP 2000 – Zoning



Draft Tweed Local Environmental Plan 2010

Lot 12 DP 1015369

39 Kudgere Avenue, Cudgera Creek

Figure 5

LAND ZONING

- BT Neighbourhood Centre
- BC Local Centre
- C3 Commercial Core
- B4 Mixed Use
- B5 Business Development

- E1N National Parks & Nature Reserves
- E2 Environmental Conservation
- IN1 General Industrial

- R1 General Residential
- R2 Low Density Residential
- R3 Medium Density Residential
- R5 Large Lot Residential

- RE1 Public Recreation
- RE2 Private Recreation
- RU1 Primary Production
- RU2 Rural Landscape
- RUS Village

- SP1 Special Activities
- SP2 Infrastructure
- SP3 Tourist

- W1 Natural Waterways
- W2 Recreational Waterways
- W3 Working Waterways
- UL Unzoned Land
- DM Deferred Matters

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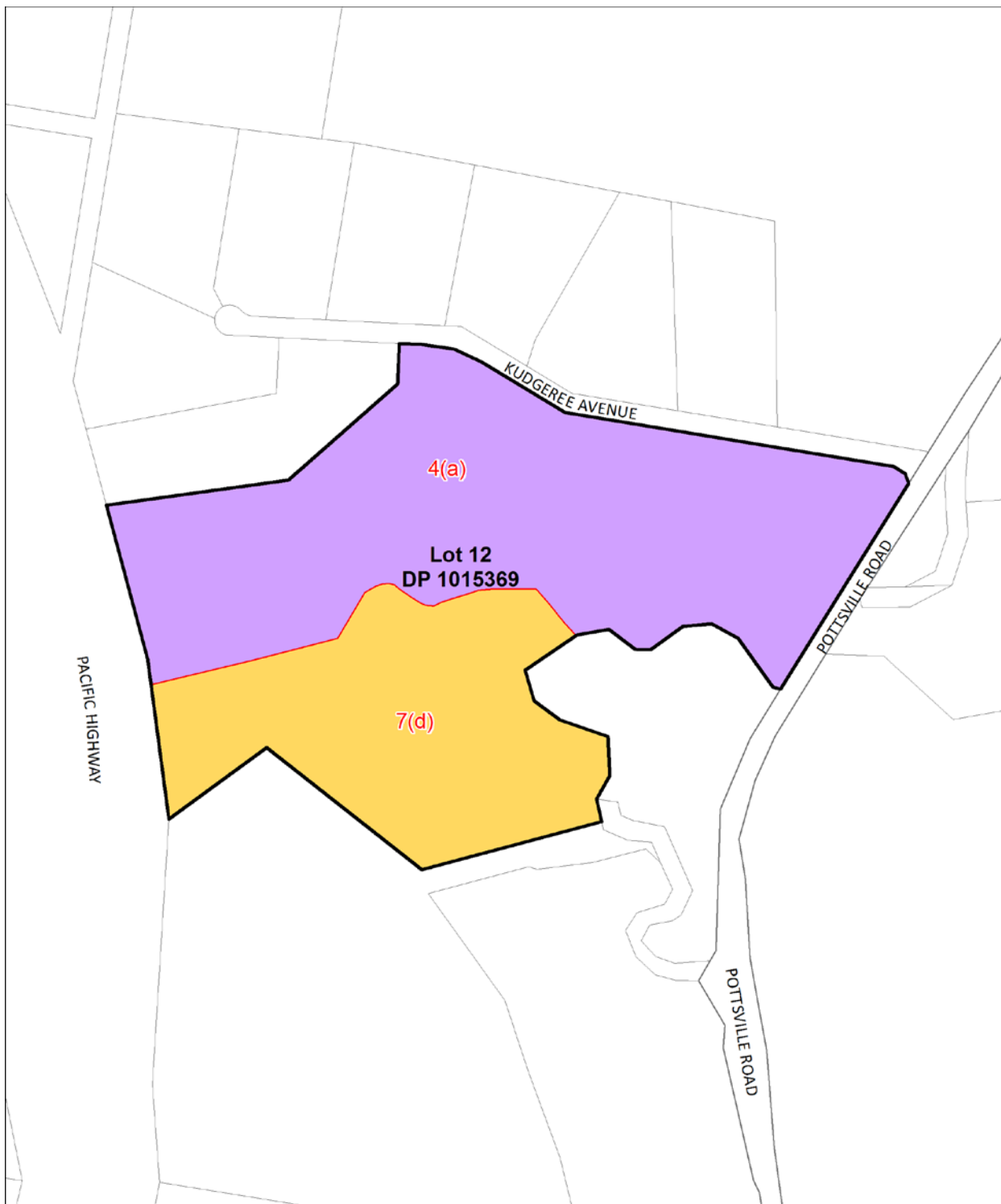


Figure 5: Zoning

Author: J. Belcher - Planning Reform Unit

Date Printed: 29 July 2011

Figure 5: Draft Tweed LEP 2010 – Zoning



Tweed Local Environmental Plan 2000 - PROPOSED AMENDMENT

Lot 12 DP 1015369

39 Kudgerie Avenue, Cudgera Creek

Figure 6

- Affected Property
Lot 12 DP1015369
- 4(a) Industrial
- 7(d) Environmental Protection
(Scenic / Escarpment)

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Figure 6: Tweed LEP 2000 – Proposed amendment

Part 2 Explanation of provisions

Amendment of the Tweed Local Environmental Plan 2000 Land Zoning Map in accordance with the proposed zoning map shown at Attachment 1

Part 3 Justification

The site adjoins land to the east identified for residential purposes in the Far North Coast Regional Strategy 2006, and land to the north identified in the Tweed Urban and Employment Land Release Strategy 2009 as potential employment land.

An industrial zoning for the site is consistent with the potential future development of this and adjoining land.

Section A Need for the planning proposal

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

The site is included in the Far North Coast Regional Strategy 2006 (FNCRS), and mapped as 'Employment Lands'.

The site has also been identified in the Tweed Urban and Employment Land Release Strategy 2009 (TUELRS) as part of a larger area of Potential Employment Lands currently being proposed for inclusion in the current review of the FNCRS being undertaken by the Department of Planning and Infrastructure, as seen in Figure 7: Tweed Urban and Employment Land Release Strategy 2009 – Area 7 Potential Employment Lands.

The site also lies immediately to the west of the proposed future urban release area locally known as Dunloe Park, identified in the FNCRS; a future residential land release covering 241 hectares with a projected population of at least 6000 residents.

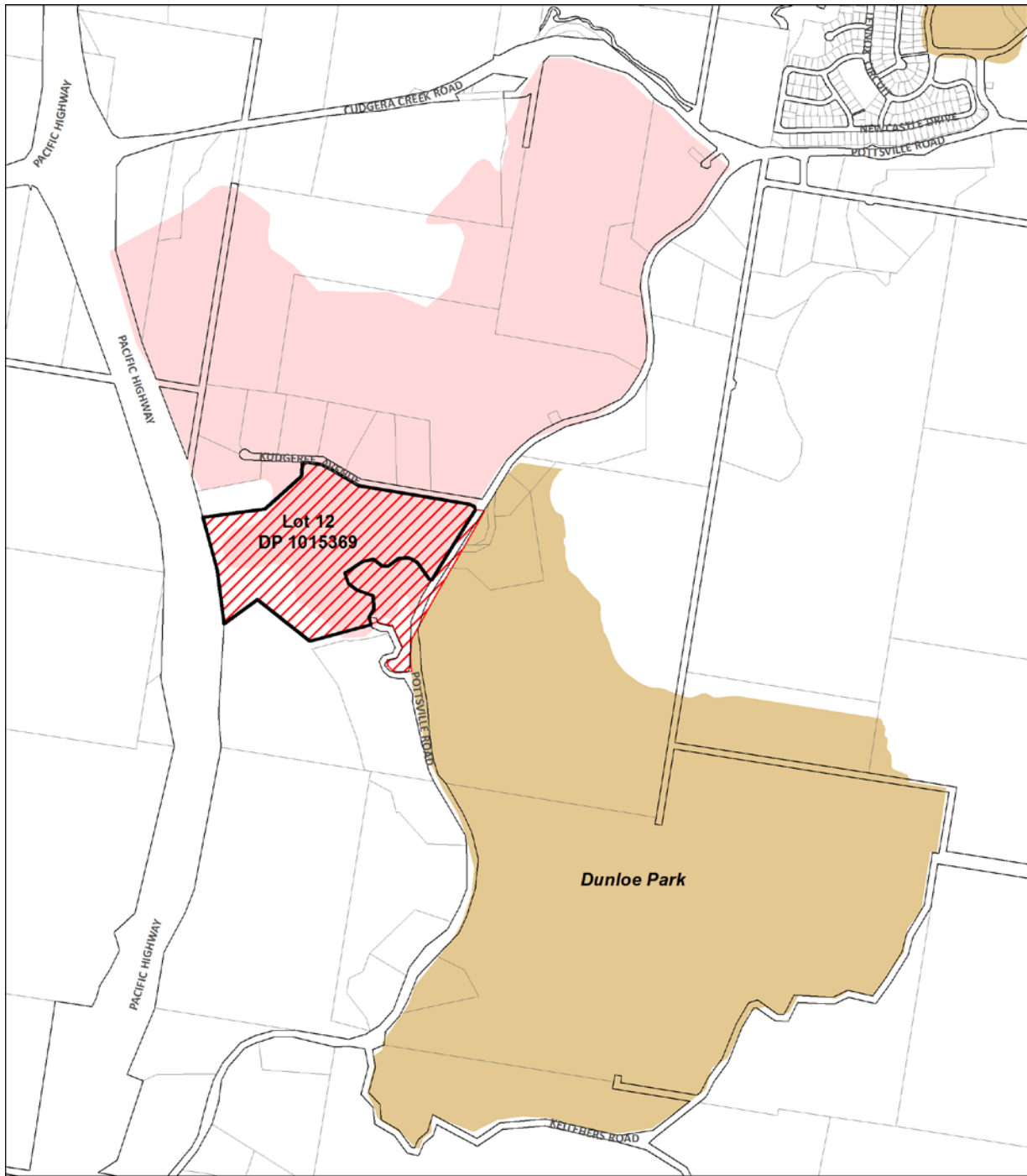
2 Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Industries (other than home industries, light industries, offensive or hazardous industries, rural industries or industries directly associated with or dependent on extractive industries) commercial premises, bulky goods retailing are prohibited under the current 1(a) Rural Zone.

Rezoning is considered to be the most appropriate means of allowing industrial development on the land.

3 Is there a net community benefit?

In accordance with the criteria established for the assessment of Net Community Benefit in the Draft Centres Policy, The Right Place for Business and Services, and PS 06-005 and 015; assessment against these criteria is addressed in Table 1 below:



Location of site in relation to proposed urban and employment land release areas under the 'Far North Coast Regional Strategy 2006' and the 'Tweed Urban and Employment Land Release Strategy 2009'

Lot 12 DP 1015369
39 Kudgera Avenue, Cudgera Creek

Figure 7

- Affected Property
Lot 12 DP1015369
- Tweed Urban and Employment Land Release Strategy 2009 Potential Employment Lands
- Far North Coast Regional Strategy 2006 Urban Release Areas
- Far North Coast Regional Strategy 2006 Employment Lands

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Figure 7: Tweed Urban and Employment Land Release Strategy 2009 – Area 7 Potential Employment Lands

Table 1: Assessment of Net Community Benefit

| Criteria | Compliance with Criteria |
|---|---|
| <p>Will the LEP be compatible with agreed State and regional strategic direction for development in the area (e.g. land release, strategic corridors, development within 800 metres of a transit node)?</p> | <p>Complies</p> <p>The proposal addresses land which has been identified for employment generating purposes within the Far North Coast Regional Strategy 2006 (FNCRS).</p> <p>The site has also been identified as part of a larger Potential Employment Land release area known as ‘Area 7” within the Tweed Urban and Employment Land Release Strategy 2009 (TUELRS).</p> <p>The site is also recognised as a potential employment land parcel capable of servicing at least in part the needs of future residents of the adjoining proposed future urban release area also identified within the Far North Coast Regional Strategy 2006.</p> |
| <p>Is the LEP likely to create a precedent or create or change the expectations of the landowner or other landholders?</p> | <p>No</p> <p>The site has been identified within the Far North Coast regional Strategy 2006, and the adopted Tweed Urban and Employment Land Release Strategy 2009. The development of the site has been recognised by the community for some time will not create a precedent.</p> |
| <p>Have the cumulative effects of other spot rezoning proposals in the locality been considered? What was the outcome of these considerations?</p> | <p>Yes</p> <p>The site forms part of the broader West Pottsville locality within which Council has developed a long-term strategy for the orderly and coordinated development of land for urban, commercial and residential purposes as defined in the TUELRS.</p> <p>The recent completion of the Pottsville Locality Plan 2011, development of the nearby Seabreeze Estate, and identification of residential and employment lands in Council’s Tweed Urban and Employment Land Release Strategy 2009 all identify a holistic strategic planning approach to the development of this site and the locality as a whole taking into consideration the longer term cumulative impact of proposed future development of this site and the broader West Pottsville locality.</p> |
| <p>Will the LEP facilitate a permanent employment generating activity or result in a loss of employment lands?</p> | <p>This proposal is for the creation of employment generating landuses compatible with the locational advantages and environmental constraints of the site.</p> <p>The West Pottsville locality has been identified as an important part of the Shire suitable for significant expansion of employment generating activities and residential growth; it is essential that with an escalating population, employment opportunities close to home are provided.</p> |

| Criteria | Compliance with Criteria |
|--|--|
| <p>Will the LEP impact upon the supply of residential land and therefore housing supply and affordability?</p> | <p>It is proposed to zone the site for industrial purposes, a landuse intended to support the employment generating intent of the Far North Coast Regional Strategy 2006, and the adopted Tweed Urban and Employment Land Release Strategy 2009.</p> <p>Once developed, the site will provide employment opportunities for existing residents and new residents taking up occupation within the proposed urban land which adjoins the site.</p> |
| <p>Is the existing public infrastructure (roads, rail, utilities) capable of servicing the proposed site? Is there good pedestrian and cycling access? Is public transport currently available or is there infrastructure capacity to support future public transport?</p> | <p>Infrastructure limitations with respect to traffic, water and lack of waste water servicing are addressed later, but are summarised as:</p> <p>The Roads and Traffic Authority have raised concerns about the visibility of the site adjoining the Pacific Highway, buffers and signage, and have recommended a separate road safety audit, mitigation of Highway traffic noise on the site, and lack of information relating to potential impact of earthworks on stability of road embankments, and capacity of the Cudgera Creek Road interchange.</p> <p>The site is not connected to Council's reticulated waste water system. This is a significant constraint to the development as proposed. Council has resolved to seek the entering into of a Voluntary Planning Agreement from the proponent to secure a Water Industry Competition Act licence administered under IPART for the provision of a standalone waste water treatment facility to service the site. The proponent has agreed to enter into such an Agreement. Any development of the site will be conditional upon the ability of the site to be fully serviced.</p> <p>At this time, the site remains isolated, but will be the catalyst for the integrated development of further employment generating lands and urban and residential land immediately adjoining the site.</p> |

| Criteria | Compliance with Criteria |
|--|--|
| <p>Will the proposal impact on land that the Government has identified a need to protect (e.g. land with high biodiversity values) or have other environmental impacts? Is the land constrained by environmental factors such as flooding?</p> | <p>The site contains vegetation of a high conservation status which has been recognised by inclusion within Council's Tree Preservation Order 2004 (TPO).</p> <p>While the matter of alleged breach of Council's TPO and wilful damage of an Aboriginal heritage scar tree were investigated by Council, negotiations with the then Department of Environment, Climate Change and Water and the landowner has lead to a substantial reduction in the area of potential development and a corresponding increase in the area of land to be rehabilitated and zoned for environmental protection. This includes land covered by the TPO, the scar tree, all land adjoin the southern boundary, including steep land and the central drainage line, now forming a coherent viable block of vegetation which is to be rehabilitated, maintained and secured through a legally binding agreement.</p> |
| <p>Will the LEP be compatible / complementary with surrounding land uses? What is the impact on amenity in the location and wider community? Will the public domain improve?</p> | <p>The site currently lies within a rural landuse zone, bounded on the south by steep land to be revegetated and retained in perpetuity, to the west by the Pacific Highway, to the east by steep land the property of Council, containing an abandoned quarry and water reservoir, and proposed residential land as discussed above, and to the north, by rural small holdings which form part of the proposed extension of employment lands within the Far North Coast Regional Strategy 2006, and the adopted Tweed Urban and Employment Land Release Strategy 2009.</p> |
| <p>Will the proposal increase choice and competition by increasing the number of retail and commercial premises operating in the area?</p> | <p>The site has been identified for potential industrial purposes and the creation of high quality employment generating industries; as such will facilitate a greater variety of employment opportunities through establishment of new commercial enterprises and to a lesser extent increase competition with existing services provided in the locality.</p> |
| <p>If a stand-alone proposal and not a centre does the proposal have the potential to develop into a centre in the future?</p> | <p>At this time, the site will be developed in isolation to any potential future developments; however, as previously mentioned, the site is part of a broader strategic plan for the west Pottsville locality which it is proposed will see an expansion of employment lands adjoining its northern boundary, and urban development immediately to the east.</p> |

| Criteria | Compliance with Criteria |
|---|--|
| <p>What are the public interest reasons for preparing the draft plan? What are the implications of not proceeding at that time?</p> | <p>The site has been identified as appropriate for the proposed landuse within regional and local strategies, thereby reinforcing expectations of the community for greater opportunities to live and work in the locality.</p> <p>Failure to proceed may have flow-on effects on the adjoining additional employment lands and urban release area.</p> |
| <p>The degree to which the policy and its objectives can be satisfied.</p> | <p>The subject site seeks to amend the Tweed LEP 2000 in accordance with the established and proposed local and regional planning strategies, and identified site constraints.</p> |
| <p>The proposed level of accessibility to the catchment of the development by public transport, walking and cycling.</p> | <p>The locality is currently isolated from the nearby town centre of Pottsville, but is intended to form part of a much expanded employment and residential precinct as mentioned above.</p> <p>Development of the site as the initial stage in development of west Pottsville will ensure that the locality as a whole is fully serviced, including the provision of a network of walking and cycle ways through open space corridors.</p> |
| <p>The likely effect on trip patterns, travel demand and car use.</p> | <p>The site fronts Kudgeree Avenue with its eastern boundary adjoining the Mooball Pottsville Road, both of which would be easily serviced by local private and public transport providers.</p> <p>In meeting the employment needs of local residents it is expected that this will reduce the travel distances of local residents who currently travel as far as the Gold Coast to meet their employment needs, substantially reducing travel times, improving quality of life and supporting local businesses and industry.</p> <p>By increasing the population density in an area identified for urban and employment growth, the proposal will assist in triggering improved public transport within the locality.</p> |
| <p>The likely impact on the economic performance and viability of existing centres (including the confidence of future investment in centres and the likely effects of any oversupply in commercial or office space on centres.</p> | <p>The recent completion of the Pottsville Locality Plan has seen a desire from Council to reinforce the local town centre as the focus of Pottsville.</p> <p>The increase in population proposed in the urban release areas already identified in the Far North Coast Regional Strategy 2006 and the employment lands and potential urban lands proposed for the current review of the Strategy will see a significant increase in population which it is expected will offset any potential adverse impacts of competition for services provided in the Pottsville town centre, and would be likely to improve the viability of the existing centre.</p> |

| Criteria | Compliance with Criteria |
|--|---|
| The amount of use of public infrastructure and facilities in centres, and the direct and indirect cost of the proposal to the public sector. | <p>This proposal represents a catalytic development of currently under-utilised rural land, to be part of a substantial increase in urban and employment generating development in the locality.</p> <p>Servicing of the site is currently achieved using the local road network which will require upgrading as part of any development application.</p> <p>The provision of waste water treatment and disposal is more problematic and will required the establishment of a private stand-alone waste water treatment plant to be approved by the proponent through a Water Industry Competition Act licence.</p> |
| The practicality of alternative locations, which may better achieve the outcomes, the policy is seeking. | <p>The site is a small parcel of land already identified in local and regional strategies and proposed as part of a much larger area of development in the future as discussed above.</p> <p>Rezoning of the site for industrial purposes is the most effective means of ensuring progress in the more extensive development of the locality.</p> |
| The ability of the proposal to adapt its format or design to more likely secure a site within or adjoining a centre or in a better location. | <p>This proposal is for the development of an isolated site apart from any existing centre, but is proposed as part of a substantial increase in both employment generating and urban lands adjoining the site.</p> |

This planning proposal represents the opportunity to both catalyse development and to improve opportunities for both lifestyle and employment related activities in a location identified as a major potential future employment and residential precinct within the Tweed Shire.

Section B Relationship to strategic planning framework

1 Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?

The site has been identified within the Far North Coast Regional Strategy 2006 (FNCRS) and forms part of a larger Potential Employment Land release area known as 'Area 7' within the Tweed Urban and Employment Land Release Strategy 2009.

Rezoning the site for industrial purposes and environmental protection is consistent with the aims of these strategies; in particular:

- Facilitate development of identified Employment Lands;
- Provide local employment opportunities for the region's employment target of an additional 32,500 new jobs from an additional 19,100 new dwellings by 2031;

- Enabling development of a site which has undergone detailed assessment and identification of critical constraints;
- Support an outcome agreed between Council, the landowner and proponent as to the rehabilitation of significant native vegetation and other constrained land on the site, and the entering into of a Voluntary Planning Agreement for the management of this vegetation and the provision of a private, standalone waste water treatment plant approved under the Water Industry Competition Act;
- Reduce travel times by providing local employment opportunities currently provided in distant locations such as South East Queensland;
- Encourage development of adjoining land identified for further employment and urban residential purposes, thereby supporting the existing Pottsville township and providing a greater diversity of services and facilities for a priority location within the Shire.

Table 2: Assessment against the Far North Coast Regional Strategy 2006 (selected extracts only)

| Outcome | Response |
|---|--|
| <p>Economic development and employment growth will be facilitated by identifying suitable business and investment opportunities and providing employment lands to support these opportunities.</p> | <p>Complies</p> <p>The proposal is consistent with a range of economic development strategies as identified by Council and the Tweed Economic Development Corporation in the adopted 2006 Ready for Business strategy, the Tweed Urban and Employment Land Release Strategy 2009, and the Far North Coast Regional Strategy 2006.</p> |
| <p>Other commercial development, which relates to the scale of the adjoining urban areas, will be located within the boundaries of towns and villages, utilising existing commercial centres where possible, and integrated with the initial planning of new release areas.</p> | <p>The development of this land will not detract from the function or amenity of the existing Pottsville town centre and will provide an important employment generator for current and future residents in Pottsville.</p> <p>The separation of the site from Pottsville and other towns and villages will minimise any potentially adverse impact on existing Industrial or commercial developments within the locality.</p> |

| Outcome | Response |
|---|--|
| <p>Councils should plan for future industrial needs within existing urban areas and take into account economic markets, South East Queensland pressures for employment lands, lifestyle opportunities, and transport improvements within and from the Region.</p> | <p>The development of this land will support the projected significant population increase likely within Pottsville and adjoining land.</p> <p>Council has considered the long term development of the west Pottsville locality; this land parcel forming the initial stage in the realisation of a significant increase in population and consequent need for local employment opportunities in identifying this site for industrial purposes.</p> |
| <p>Certain industries will need to be located away from existing urban centres due to their type, scale and nature. Councils will address this need through their Local Growth Management Strategies.</p> | <p>The development is considered consistent with this planning outcome in that the land is considered suitable for industrial development given its close proximity to the Pacific Highway and the spatial separation afforded the site from residential areas.</p> |
| <p>Local environmental plans will ensure that sufficient lands which are zoned employment and currently vacant are protected to accommodate the new jobs required for each local government area until 2031.</p> | <p>This proposal is consistent with the employment objectives outlined in the FNCRS and the Tweed Urban and Employment Land Release Strategy 2009.</p> |
| <p>Use of existing vacant industrial land should be considered prior to the release of any major new industrial areas.</p> | <p>While approximately 62 hectares of undeveloped industrial zoned has been identified in the TUELRs as being land available for uptake, the location of this site and its strategic significance as a catalyst for future expansion of employment and urban lands to be integrated with development proposed on adjoining land makes the site an important first step in the realisation of the broader strategic planning and development of the locality as discussed elsewhere in this proposal.</p> |
| <p>Planning for commercial and industrial land uses must be integrated with the supply of relevant infrastructure and transport.</p> | <p>The site requires further investigation with respect to potential impacts on and relationship to the Pacific Highway and the Cudgera Creek Road intersection as identified in correspondence from the Roads and Traffic Authority.</p> <p>The site is not connected to Council's reticulated waste water system and as such the proponent has agreed to enter into a Voluntary Planning Agreement to secure a Water Industry Competition Act licence for the provision of a private standalone treatment and disposal system.</p> |

2 Is the planning proposal consistent with the local Council's Community Strategic Plan, or other local strategic plan?

The Tweed Community Strategic Plan 2011/2021 (CSP) creates a framework to implement Council's four-year Delivery Program and annual Operational Plan, which will align the community's aspirations with the necessary strategy development, planning and resourcing required to achieve the long term vision and deliver the outcomes.

Under the theme of Strengthening the Economy, the CSP aims to strengthen and diversify the region's economic base in a way that complements the environmental and social values of the Tweed. In part, Council has agreed to implement policy and decisions which balance development and environmental protection; fund and work with 'Destination Tweed' to attract business, and grow employment and create tourism opportunities that take advantage of the Tweed's natural environment and assets.

Under the theme of Caring for the Environment, the CSP aims to see Council and the community value, respect and actively participate in the care and management of our natural environment for current and future generations, through, amongst other actions Increase its focus on protecting, regulating and maintaining the natural and built environment.

This proposal represents a direct response consistent with the direction and intent of the Tweed Community Strategic Plan.

3 Is the planning proposal consistent with the applicable State Environmental Planning Policies (SEPPs)?

This site is not subject to the application of *SEPP 14 Coastal Wetlands*, *SEPP 26 Littoral Rainforest* or *SEPP 71 Coastal Protection*.

The planning proposal is of a scale and nature that should not trigger the application of *SEPP (Major Development) 2007*.

The following SEPPs do apply to the subject site:

SEPP (Infrastructure) 2007

The planning proposal is of a scale and nature that will trigger the application of *Schedule 3 Traffic generating development to be referred to the RTA* of *SEPP (Infrastructure) 2007*.

The Roads and Traffic Authority have been consulted regarding this proposal and have raised a number of concerns relating to, in part, the visual impact, stability of road batters and traffic generation impacts on the Cudgera Creek Road intersection as reported elsewhere. A copy of their response to the proposal can be seen in Attachment 3 – Letter from Roads and Traffic Authority.

SEPP 55 – Remediation of Land

This SEPP introduces planning controls for the remediation of contaminated land. The policy states that land must not be developed if contamination renders it unsuitable for a proposed use. If the land is unsuitable, remediation must take place before the land is developed.

A preliminary site contamination assessment has been undertaken which indicates that the site has been historically used for agricultural purposes, including banana farming. Based on this analysis, the contaminants of potential concern include heavy metals (Arsenic, Cadmium, Chromium, Mercury, Nickel, Lead and Zinc as used in association with pesticides and fertilisers, and Organochlorine pesticides (OCPs) associated with potential application of insecticides and termiticides.

SEPP 44 – Koala Habitat Protection

This SEPP aims to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas.

The site has been mapped as containing secondary (B) koala habitat.

Council has resolved that existing vegetation on the site be included in a larger consolidated parcel of land to be fully revegetated and protected through the establishment of a legally binding agreement prior to the rezoning of the site.

This expansion of land to be revegetated with native vegetation will produce a larger more resilient stand of vegetation consistent with the adjoining vegetation which forms part of a wildlife corridor and land bridge across the Pacific Highway just south of the site.

SEPP (North Coast Regional Environmental Plan) 1988

Clause 7 – Prime Crop or Pasture Land: The site is mapped as containing land suitable for grazing and does not contain State Significant Agricultural Land.

Clause 14 – Wetlands or Fisheries Habitat: There are no mapped wetlands in close proximity; however, any application for development of the site will require contemporary water management facilities to ensure that runoff entering the local drainage network is of a high quality.

Part 3 Conservation of the environment: Refer to discussion above on Council's resolution relating to the expansion and protection of native vegetation on the site.

Division 3 Heritage: the Aboriginal heritage scar tree will now be protected as part of the area of sloping land to be revegetated and protected in perpetuity through a legally binding agreement to be finalised prior to the rezoning of the site.

Clause 38 Plan preparation – urban land release strategy: The site has been identified within the Far North Coast Regional Strategy, 2006 – 2031. Compliance with requirements of the Far North Coast Regional Strategy is addressed in Section B 1 above.

Clause 40 Plan preparation - principles for urban zones: The Planning Proposal will adopt the existing industrial zones within the Tweed Local Environmental Plan 2000.

Clause 45 Plan preparation – hazards: All relevant hazards are addressed in Section 4.0 of this Planning Proposal. There are no hazards which impose a constraint on the rezoning of the land.

Clause 47 Plan preparation and development control – principles for commercial and industrial development: While currently not part of a local town centre, the site has been

identified as part of a much larger urban and employment land release strategy within the Far North Coast Regional Strategy 2006 -2031 and the Tweed Urban and Employment Land Release Strategy 2009. This site is the first stage in the realisation of the broad strategic focus of these strategies.

Clause 48 Plan preparation – maintenance of industrial development zonings: As per Clause 47. This site expands the area of potential industrial land and supports employment generating development which will adjoin further employment lands being considered for inclusion in the current review of the Far North Coast Regional Strategy and residential land already identified in the Strategy.

Part 5 Regional infrastructure: Council’s Roads and Traffic Engineer has considered the proposal and made a preliminary assessment that the local road network has sustain the level of traffic to be generated from this development once a number of local improvements are made. The Roads and Traffic Authority have a number of concerns relating to the impact on the adjoining Pacific Highway and the Cudgera Creek Road intersection as identified in their letter seen in Attachment 3.

Clause 58 Plan preparation – servicing urban area: The site is currently not connected to Council’s reticulated waste water disposal system and represents a major constraint to the development of the site.

Council has resolved that the proponent should signal their intention to acquire a licence under the Water Industry Competition Act for the provision of a private standalone waste water treatment facility for the site, by entering into a Voluntary Planning Agreement as discussed later.

SEPP (Rural Lands) 2008

As indicated above, the site is of marginal agricultural value, being suitable for grazing and native vegetation. The site does not contain is not state significant or regionally significant farmland.

4 Is the planning proposal consistent with applicable Ministerial Directions (s 117 Directions)?

Consistency with the relevant section 117 Ministerial Directions is assessed in Table 3 below:

Table 3: Consistency with section 117(2) Ministerial Directions (Only a summary of key provisions have been included)

| <i>Application</i> | Relevance to this planning proposal |
|------------------------------------|-------------------------------------|
| 1. Employment and Resources | |

1.1 Business and Industrial Zones

Applies when a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed business or industrial zone (including the alteration of any existing business or industrial zone boundary)

Consistent

The proposal is for an expansion of industrial land consistent with both regional and local planning strategies (the Far North Coast Regional Strategy 2006 and the Tweed Urban and Employment Land Release Strategy 2009)

1.2 Rural Zones

Applies when a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed rural zone (including the alteration of any existing rural zone boundary)

This proposal is consistent with the direction by way of justification based upon compliance with the Far North Coast Regional Strategy 2006

Under this direction a planning proposal must:

- (a) not rezone land from a rural zone to a residential, business, industrial, village or tourist zone.
- (b) not contain provisions that will increase the permissible density of land within a rural zone (other than land within an existing town or village).

1.3 Mining, Petroleum Production and Extractive Industries

Applies when a relevant planning authority prepares a planning proposal that would have the effect of:

Industrial zones within the current Tweed LEP 2000 prohibit mining; however, extractive industries and mining are not prohibited within the draft Tweed LEP 2010.

- (a) prohibiting the mining of coal or other minerals, production of petroleum, or winning or obtaining of extractive materials, or
- (b) restricting the potential development of resources of coal, other minerals, petroleum or extractive materials which are of State or regional significance by permitting a land use that is likely to be incompatible with such development.

1.5 Rural Lands

applies when:

- (a) a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed rural or environment protection zone (including the alteration of any existing rural or environment protection zone boundary) or

While the site is currently zoned 1(a) Rural, the site is of marginal agricultural value and has been identified in the Far North Coast Regional Strategy 2006 as potential employment land.

A planning proposal to which clauses (a) and (b) apply must be consistent with the Rural Planning Principles listed in *State Environmental Planning Policy (Rural Lands) 2008*.

2. Environment and Heritage

2.1 Environment Protection Zones

A Draft LEP shall include provisions that facilitate the protection and conservation of environmentally sensitive areas and shall not reduce the environmental protection standards that apply to the land.

Consistent

The proposal will see previously damaged native vegetation rehabilitated and an increase in the overall area of vegetation to be protected.

Such rehabilitation and protection is to be embedded within a legally binding agreement prior to the making of the plan.

2.3 Heritage Conservation

A planning proposal must contain provisions that facilitate the conservation of items, places, buildings, works, relics, moveable objects or precincts of environmental heritage significance to an area, in relation to the historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic value of the item, area, object or place, identified in a study of the environmental heritage of the area

The Aboriginal heritage scar tree is to be included in that area to be set aside for rehabilitation and protection mentioned in 2.1 above.

3. Housing, Infrastructure and Urban Development

3.4 Integrating Land Use and Transport

In summary, this Direction provides that a Draft LEP shall locate zones for urban purposes and include provisions that give effect to or are consistent with the aims, objectives and principles of Improving Transport Choice – Guidelines for Planning and Development (DUAP 2001) and The Right Place for Business and Services – Planning Policy (DUAP 2001). The Direction also provides that a Draft LEP may be consistent with the Direction if the land has been identified in the Strategy prepared by Council and approved by the Director General or, the rezoning is justified by an Environmental Study or the rezoning is in accordance with the relevant regional strategy.

Traffic related issues have been considered and the Roads and Traffic Authority approached for their response to the proposal as seen in Attachment 3.

The RTA response has raised issues relating to the close proximity and high visibility of the site from the Pacific Highway, and the potential impact on the Cudgera Creek Road intersection. These matters will need to be fully addressed as part of the final planning proposal.

4. Hazard and Risk

4.4 Planning for Bushfire Protection

Applies when a relevant planning authority prepares a planning proposal that will affect, or is in proximity to land mapped as bushfire prone land.

In summary, this Direction provides that in the preparation of a Draft LEP a Council shall consult with the Commissioner of the Rural Fire Service and take into account any comments made. In addition, the Draft LEP is required to have regard to Planning for Bushfire Protection, 2001 among other things.

The proposal contains some areas of land identified as being Bushfire Prone.

A Bushfire Hazard Assessment in accordance with the requirements set out in *'Planning for Bushfire Protection'* (2006) will be required to ensure that the relevant APZs are provided for bushfire management.

5. Regional Planning

5. Implementation of Regional Strategies

Planning proposals must be consistent with a regional strategy released by the Minister for Planning.

The site has been identified as Employment Land within the Far North Coast Regional Strategy 2006.

5.4 Commercial and Retail Development along the Pacific Highway, North Coast

Applies when a relevant planning authority prepares a planning proposal for land in the vicinity of the existing and/or proposed alignment of the Pacific Highway.

The site adjoins the Pacific Highway and as such has been referred to the Roads and Traffic Authority for their consideration, a copy of their response can be seen in Attachment 3, in which they raise concerns about visibility, slope stability of road batters, impact on the Cudgera Creek Road intersection amongst other matters.

6. Local Plan Making

6.1 Approval and Referral Requirements

In summary, this Direction provides that a Draft LEP shall minimise the inclusion of provisions that require the concurrence, consultation or referral of development applications to a Minister or Public Authority, not contain these provisions unless Council has obtained approval from the relevant Authority and not identify development as designated development unless certain prerequisites can be met.

The draft planning proposal does not include provisions that require; the concurrence, consultation or referral of development applications to a Minister or public authority.

6.2 Reserving Land for Public Purposes

A planning proposal must not create, alter or reduce existing zonings or reservations of land for public purposes without the approval of the relevant public authority and the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General).

The planning proposal does not create, alter or reduce land reserved for a public purpose.

There has been no request from the Minister or public authority to reserve land for a public purpose at this stage.

6.3 Site Specific Provisions

A Draft LEP that amends another Environmental Planning Instrument in order to allow a particular development proposal shall either allow that land use to be carried out in the zone that the land is situated on or rezone the site to an existing zone already applying in the Environmental Planning Instrument that allows that land use without imposing any development standards or requirements in addition to those already existing or allow that land use on the relevant land without imposing any development standards or requirements in addition to those already contained in the principal Planning Instrument being amended.

The planning proposal seeks to zone the land appropriate to the land uses proposed and does not seek to include additional uses beyond what is permitted with the land use table.

The proposal is consistent with the existing land use zones under the Tweed LEP 2000 and the Direction.

Section C Environmental, Social and economic impact

- 1 Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats will be adversely affected as a result of the proposal?

The site is recorded as containing vegetation of high ecological status and high ecological sensitivity as defined in the Tweed Vegetation Management Strategy 2004.

The site has been the subject of detailed investigations by Council's Natural Resource Management Staff and specialist officers from the former Department of Environment Climate Change and Water related in part to the alleged illegal clearing of native vegetation covered by Council's Tree Preservation Order 2004 and alleged wilful damage of an Aboriginal heritage scar tree within the site.

Following resolution of these investigations an increased area of land to be set aside for revegetation and protection through a legally binding agreement has been resolved by Council.

The footprint of potentially developable land has now been refined and defined as delineated in the proposed zoning boundaries for the site shown in Figure 6.

As such, there is no likelihood that critical habitat, threatened species, populations or ecological communities or their habitats will be adversely affected as a result of the proposal.

- 2 Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

Apart from the positive net outcome listed in '1' above, the key environmental constraints (physical) affecting the site includes the presence of high ecological status native vegetation, steep slopes and drainage. These constraints have been fully investigated, and addressed, ensuring that the zoning boundaries conform to the constraints affecting the site, and as agreed between Council and the proponent prior to preparation of this draft planning proposal.

As previously mentioned, the site is not connected to Council's reticulated waste water disposal system, and as such remains the most significant environmental issue affecting the site.

It is essential that the site be serviced by an approved waste water treatment, storage and disposal system meeting the requirements of Council. As such, Council has resolved that the proponent be requested to confirm their commitment to the provision of a private waste water system by entering into a Voluntary Planning Agreement, to be prepared by Council's Solicitors at the proponents' cost, pertaining to their commitment to provide a stand-alone private wastewater disposal utility scheme and the obtainment of a licence under the Water Industry Competition Act 2006 (WIC Act) administered by the Independent Pricing and Regulatory Tribunal (IPART);

Any Gateway determination should take into consideration the need for such a commitment.

- 3 How has the planning proposal adequately addressed any social and economic effects?

The proponent has not provided any details as to the potential social and economic effects of the development of the site; however, Council has previously identified the site as being strategically located and a key site linking potential future residential land immediately to the east, and additional employment generating lands adjoining the site to the north.

Section D State and Commonwealth interests

- 1 Is there adequate public infrastructure for the planning proposal?

Roads

Development of the site for industrial purposes will result in an increased demand for public infrastructure, in particular, the local and regional/state road network.

Augmentation or upgrade of the local road network will be required, with detail pending further detailed advice from Tweed Shire Council Roads and Traffic Engineers and the Roads and Traffic Authority.

Waste water

As mentioned in '2' above, the site cannot be developed until such time as matters relating to waste water treatment, storage and disposal raised in 'Section C, 2' above are addressed.

Water

There is sufficient capacity in the Cowell Park Reservoir, which lies in adjoining Council-owned land to the east, to supply the site; however, augmentation of the main will be required and may involve construction of a 375mm main parallel to the existing 375mm main along the Pottsville Mooball Road from the reservoir to Kudgerie Avenue, and a 300 mm main along Kudgerie Avenue to the entrance of the site.

Electricity and Telecommunications

Electricity and Telecommunications services are available to the site and it is proposed development will utilise 'smart' technology; fibre optic cabling which runs parallel to and within 30 metres of the eastern boundary.

Stormwater

An existing drainage line enters the site from the west (culvert under the Pacific Highway) and a more substantial central, partly vegetated drainage line are to be retained and enhanced within any future development of the site.

A preliminary Water Sensitive Urban Design (WSUD) and stormwater management strategy has been developed for the site to deliver best practice outcomes for the protection of Cudgera Creek and internal waterway corridors, through the use of synergies between potable water conservation, stormwater quality and landscape design objectives.

The WSUD strategy would involve a combination of allotment potable water conservation, 'at-source' stormwater treatments and 'precinct-scale' stormwater treatment integrated into identified open space areas.

Performance modelling of the proposed strategy (bioretention at 2% of the catchment area) revealed compliance with best-practice nutrient load reduction objectives accepted by many councils and advocated by the Healthy Waterways Partnership. Detailed design of the WSUD elements will be undertaken in accordance Council's Design Development Specification for Stormwater Drainage D5 and the WSUD Technical Design Guidelines for SEQ 2006.

In addition to the landscape and civil drawings, the following documentation will also be produced as part of the detailed development phase:

- WSUD Design Report OR Detailed Stormwater Management Plan;
- WSUD Construction Specifications Document;
- WSUD Construction and Establishment Method and Certification Document, and

- WSUD Device Management and Maintenance Plan.

2 What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

While consultation with the Roads and Traffic Authority has already occurred, further consultation with relevant State and Commonwealth Public Authorities as identified in the Gateway determination is expected.

Part 4 Community consultation

The Gateway determination will specify the community consultation that must be undertaken on the planning proposal. The consultation will be tailored to specific proposals generally on the basis of a 14 day exhibition period for low impact planning proposals and a 28 day exhibition period for all other planning proposals.

Council considers that this planning proposal should be exhibited for a period of 28 days.

Summary and conclusions

This proposal seeks to support a request for Council to prepare a Planning Proposal for the rezoning of Lot 12 DP 1015369 Kudgerie Avenue, Cudgera Creek, an area of 22.69 hectares, adjoining the Pacific Highway which is currently zoned 1(a) Rural, to 4(a) Industrial and 7(b) Environmental Protection (Scenic/Escarpment).

The Far North Coast Regional Strategy 2006 has identified this site as a potential Employment Lands release area.

This planning proposal seeks to maintain a consistent and compliant approach to both the Far North Coast Regional Strategy 2009 and the Tweed Urban and Employment Lands Release Strategy 2009, each of which include this site, and seek to promote the 'smart development' of identified lands.

The site has been the subject of extensive investigations relating to an earlier proposal which could not be finalised due to the significance of site constraints and pending legal action.

The site is not connected to Council's reticulated waste water disposal system, and as such, the matter of providing a private system for the treatment, storage and disposal of effluent from the site is critical to the potential development of the site.

The Pacific Highway runs along the western boundary of the site, making the site highly visible, likely to impact upon stability of road batters, and impact on the already limited capacity of the Cudgera Creek Road intersection. These and other matters of concern have been raised by the Roads and Traffic Authority.

The site presents a range of complex planning considerations with respect to the protection of environmentally sensitive lands, close proximity to the Pacific Highway and the provision of essential infrastructure.

While not all of these matters have been adequately addressed at this stage, it is considered appropriate to refer this proposal for a Gateway determination, with further refinement possible with additional consultation.

ATTACHMENTS

Attachment 1: - Council Report of 16 August 2011

Attachment 2: - Council Report of 15 March 2011

Attachment 3: - Letter from the Roads and Traffic Authority

Attachment 1

Council Report of 16 August 2011

COPY OF COUNCIL REPORT OF 16 AUGUST 2011 TO BE ATTACHED
HERE ONCE REPORT ENDORSED

Attachment 2

Council Report of 15 March 2011

[Agenda Report](#)

**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

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

TITLE: Error! Unknown document property name.

Cr P Youngblutt

Cr J van Lieshout

RESOLVED that:

1. Council endorses the preparation of a planning proposal for the rezoning of the site for industrial and environmental protection purposes consistent with Council's resolutions of 17 August 2010;
2. The proponent be requested to confirm their commitment to the provision of a private waste water system by entering into a Voluntary Planning Agreement, to be prepared by Council's Solicitors at the proponents' cost, pertaining to their commitment to provide a stand-alone private wastewater disposal utility scheme and the obtainment of a licence under the Water Industry Competition Act 2006 (WIC Act) administered by the Independent Pricing and Regulatory Tribunal (IPART);
3. Council compliance and enforcement officers implement a protocol for the reporting of alleged damage of Aboriginal artefacts to the Department of Environment, Climate Change and Water consistent with a Notice of Motion endorsed at the Council meeting of 16 March 2010, which requires early notification of any alleged damage of Aboriginal artefacts;

4. The General Manager seeks a high level meeting with the Department of Environment, Climate Change and Water regarding a more proactive involvement of the Department in the investigation, enforcement and management of alleged damage of Aboriginal artefacts, and native vegetation within the Tweed.

FOR VOTE - Cr P Youngblutt, Cr W Polglase, Cr D Holdom, Cr B Longland, Cr J van Lieshout, Cr K Skinner

AGAINST VOTE - Cr K Milne

Agenda Report

TITLE: Error! Unknown document property name.

ORIGIN:

Director Planning and Regulation

FILE NO: GT1/LEP/2000/85 Pt6 (related file: GT1/LEP/2006 Pt22)

SUMMARY OF REPORT:

This report provides an update on the Pottsville Employment Lands Draft LEP No.85, which lapsed on 1 January 2011 and seeks Council's endorsement for a planning proposal to continue with the previously Council endorsed rezoning. The report also updates Councillors on the prior alleged wilful damage of a State Heritage Register listed Aboriginal Scar tree situated upon the land, as well as, issues affecting future waste water management options.

The *Environmental Planning and Assessment Act, 1979*, in particular Part 3 relating to the preparation of draft local environmental plans (LEP), was amended by the *Environmental Planning and Assessment Amendment Act 2008*, which took effect on 1 June 2009. The amendments brought into effect a substantially different process and a corresponding transitional and savings provision to safeguard the continuation of draft LEPs. This provision stipulated the timeframe within which existing draft LEPs were to be completed. The draft Pottsville Employment Lands LEP fell outside of the designated timeframe and lapsed. Based on Council's endorsement of a rezoning of the land and the resource commitment to-date to implement a draft LEP this reports recommends that a planning proposal be prepared, subject to various but necessary safeguard measures being satisfied.

Further, the report updates Councillors on the latest actions taken by the Department of Environment, Climate Change and Water in response to Council's request for action regarding alleged damage to an Aboriginal heritage scar tree situated on the site. Acknowledging the Department's concerns and resolution not to proceed with any prosecutorial action in respect of the damage to the tree, it is recommended that Council officers liaise with the Department in an attempt to secure a better understanding about the Department's ongoing intentions regarding the management of Aboriginal artefacts and native vegetation falling within its Ministerial regulatory and jurisdictional area of responsibility, as occurring within the Tweed.

RECOMMENDATION:

That:

- 1. Council endorses the preparation of a planning proposal for the rezoning of the site for industrial and environmental protection purposes consistent with Council's resolutions of 17 August 2010;**
- 2. The proponent be requested to confirm their commitment to the provision of a private waste water system by entering into a Voluntary Planning Agreement, to be prepared by Council's Solicitors at the proponents' cost, pertaining to their commitment to provide a stand-alone private wastewater disposal utility scheme and the obtainment of a licence under the Water Industry Competition Act 2006 (WIC Act) administered by the Independent Pricing and Regulatory Tribunal (IPART);**
- 3. Council compliance and enforcement officers implement a protocol for the reporting of alleged damage of Aboriginal artefacts to the Department of Environment, Climate Change and Water consistent with a Notice of Motion endorsed at the Council meeting of 16 March 2010, which requires early notification of any alleged damage of Aboriginal artefacts;**
- 4. The General Manager seeks a high level meeting with the Department of Environment, Climate Change and Water regarding a more proactive involvement of the Department in the investigation, enforcement and management of alleged damage of Aboriginal artefacts, and native vegetation within the Tweed.**

REPORT:

This report provides an update on the investigations and process associated with the draft LEP for Pottsville Employment Lands, and is divided into three (3) sections addressing:

1. Status of rezoning;
2. Options for the management of waste water, and
3. DECCW response to alleged wilful damage of Aboriginal heritage scar tree.

At its meeting of 17 August 2010 Council endorsed the following resolutions:

1. *Endorses the boundary redefinition of the land subject to the rezoning as identified in Figure 5: Option 5 – Revised development footprint and excluded land as proposed by the Proponent; to this report;*
2. *Defers proceeding with legal action in relation to vegetation clearing on the basis of the landowner agreeing to a revegetation management strategy in accordance with Resolution No. 3 below;*
3. *Endorses that Council Officers negotiate with the landowner for the restoration, revegetation, contributory off-set planting, maintenance, and protection of vegetation, as necessary, through a legally binding agreement, and that a satisfactory resolution of these matters be concluded prior to the gazettal of any rezoning under GT1/LEP/2000/85 (Amendment No. 85);*
4. *Endorses that land identified as unsuitable for rezoning for urban purposes be rezoned to reflect the environmental qualities and constraints of the land; and*
5. *Endorses that the Applicant be advised of Council's concern over the proposed method of waste water treatment proposed and the need for the Applicant to demonstrate certainty of all aspects of the scheme to Council's satisfaction.*

This report addresses progress of these resolutions and reports on the findings of the Department of Environment Climate Change and Water relating to alleged damage of Aboriginal heritage scarred tree on the site.

1. Status of rezoning

As a consequence of the Savings and Transitional provisions in the *Environmental Planning and Assessment Act 1979*, draft “amending” LEPs, where a section 65 Certificate was not issued prior to 1 July 2009, must have been finalised or brought into the current Part 3 by 1 January 2011. Due to the unresolved status of significant constraints affecting the site, in particular disposal of waste water, this LEP was not brought into the current Part 3 by the due date and as such ceased to exist.

A fresh planning proposal is required and requires a resolution of the Council in order for council officers to proceed with a rezoning of the land. Fees and charges apply to planning proposals in accordance with the adopted Fees and Charges schedule 2010/2011.

Why should a planning proposal be prepared?

The Tweed Urban and Employment Land Release Strategy 2009, notes that the Shire has approximately 231 hectares of zoned industrial land, of which 138 hectares is vacant land, which when discounted for physical and infrastructure constraints leaves 102 hectares, or the equivalent of 44% of the currently available land, sufficient land to meet demand for the next 10 years. Notwithstanding this, the Strategy suggests that “if Council wants to maintain a significant stock of zoned land in order to provide a variety of development locations it will need to commence replenishing land stocks through the rezoning process in 2011.”

While there remains a substantial stock of zoned land available for industrial purposes, constraints on development of these sites and market forces have a significant impact on the actual amount of land available for uptake; in addition to which, the Far North Coast Regional Strategy 2006 effectively limits the amount of land which should be zoned for industrial purposes, using population projections as a means of estimating the areas of land which will be required to meet employment needs. Although the methodology is sound in principle it means that undevelopable or ‘banked’ land is counted toward the total supply of available land to match the projected population demand; it is this element that limits the Council’s ability to bring on line other sites which may be more suitable for meeting present needs in the short to medium-term.

It is therefore imperative that Council ensures that land considered for rezoning is both suitable for the proposed landuse, and is likely to proceed. The Pottsville employment land site has significant constraints relating to slope, vegetation, visual impact, and waste water disposal, which have respectively raised questions about the suitability of the site; each of which having been addressed to varying levels of satisfaction.

On balance, the rezoning proposal and the associated management controls or ‘safety’ mechanisms proposed, ensures that this site has reasonable prospects of both advancing to a rezoning of the land and in the provision of much needed employment and service opportunities in the Pottsville locality.

In summary, there is strong justification for a rezoning of the subject lands however, no matter how strong the justification the rezoning should not occur at the expense of the

broader strategic planning for the Tweed and the broader provision of employment lands generally, as could occur if this site cannot be serviced with the necessary infrastructure. For that reason it is seen as an essential element of any proposed urban rezoning that relative certainty exists in respect of the provision of essential infrastructure prior to a rezoning occurring.

In this instance, it is recommended that a planning proposal only be prepared if the proponent agrees to enter into a voluntary planning agreement (VPA), to be prepared by Council's Solicitors at the proponents' cost, relating to their commitment to provide a private waste water utility scheme and the obtainment of a licence under the Water Industry Competition Act 2006 (WIC Act) and Independent Pricing and Regulatory Tribunal (IPART) Licensing regime to provide retail services, or as otherwise directed by Council's Solicitors. A VPA can be finalised prior to the gazettal of a draft LEP amendment.

2. Options for the management of wastewater

The site is currently not connected to Council's reticulated water and sewerage infrastructure. Rezoning of the site for industrial purposes without a guarantee of serviceability could expose Council to undue pressure to reprioritise its works programme to bring this site into operation ahead of other priority localities and projects at substantial cost to Council, were it possible at all.

Therefore, rezoning of this site for industrial purposes should only proceed once a legally binding guarantee of provision of waste water infrastructure and facilities is obtained, and proponent offers to enter into a voluntary planning agreement whereby such guarantees are provided and Council is not committed to facilitating development of the site should the guarantees of the proponent not be realised.

On 9 September 2010 Council officers met with the proponent to define requirements for a waste water management strategy which provided Council with the certainty necessary to justify proceeding with rezoning of the site.

Issues of concern have included:

- Wet weather storage capacity, a major concern especially where disposal on the floodplain is proposed;
- Availability and suitability of the proposed disposal area on the floodplain to the north of Cudgera Creek Road;
- Any special considerations regarding potential environmental impacts of disposal on the site, including impacts on adjoining land and the watertable, not just on the site but potential to elevate the watertable on adjoining land;
- Guarantees about the maintenance of the site as a disposal area in perpetuity;
- Availability and certainty of easements for infrastructure from the site to the disposal area;
- monitoring of impacts of disposal on the site, adjoining land and watertable, and
- Guarantees of consistent quality of discharged effluent.

These are significant issues which have not been addressed in the planning proposal, but which, as discussed below, may be adequately addressed through a licensing arrangement and use of a voluntary planning agreement.

In response, the proponent submitted a planning proposal in 5 October 2010 proposing the use of a private waste water utility manufactured by Sirex Water Utilities Pty Ltd, which they argue is capable of managing the site's waste water and providing potable and recycled water supply to meet the development's non-potable and potable water demands.

Council's Water Unit has reviewed this proposal in line with other broader strategic planning matters, such as servicing of west Pottsville, as reported to Council at its meeting of 15 February 2011, and the recent planning proposal for development of land at Mooball seeking the use of the same technology.

In reviewing the Sirex system and waste water management proposal;

- The Water Unit supports in principle, the proposed stand alone private water and wastewater utility scheme under the Water Industry Competition Act 2006 (WIC Act) including relevant licensing, as administered by the Independent Pricing and Regulatory Tribunal (IPART).
- The Water Unit supports in principle the proposal to enter into an agreement with the utility service provider under an (WIC Act) licence to provide retail services.

The proposed stand alone private water and wastewater utility scheme referred to above is to include at a minimum:

- The establishment of a private utility company which would gain and hold the WIC Act network operational and retail licenses for both water supply and wastewater services including the advanced Wastewater Treatment Plant (WWTP) and irrigation scheme.
- A private WWTP within industrial land producing non-potable residential reuse standard effluent and a third pipe distribution and reticulation system to all lots within the development, maximising reuse of this effluent within the development and providing the opportunity for reuse in the locality.
- A robust treatment process and specifically in respect to achieving the non-potable residential reuse effluent standard proposed and include Membrane Bio Reactor, Ultra Filtration, Reverse Osmosis, Ultra Violet and Chlorination disinfection processes.
- A pressure sewer system which is to achieve low infiltration and inflow ensuring significant reductions in peak flows and the volume of effluent to be treated and reused.
- Effluent storages are sufficient to cater for the extended wet weather periods experienced on the Tweed.

- Capacity to reuse and or irrigate all effluent and these scheme components are sufficient to cater for this objective in perpetuity.
- Obtaining a Protection of the Environment Operations Act 1997 (PEO Act) licensed discharge point for contingency discharges.

The Water Unit has further advised that the strategy document provided is light on detail and is really a statement of intent. It is reliant on the WIC Act application process to develop the detail. The strategy does not include third pipe reuse of effluent on the actual industrial lots. This is a requirement and the strategy will need to be amended or a commitment to do so is required prior to rezoning.

The tenure of the proposed offsite irrigation lands and the linkages to those lands for pipe work and the like must to be gained prior to lodgement of any development application. The irrigation land or lands will have to prove to be suitable for this purpose in perpetuity, and a PEO Act licensed discharge for contingency discharges to a waterway, would be required to be gained prior to lodgement of any development application.

Additionally other Government agency approvals and requirements of the WIC Act Approval would have to be gained and met to demonstrate that sewerage services, effluent management and environmental performance can be provided and achieved prior to lodgement of any development application.

Under the WIC Act, IPART must provide the application to, and invite submissions from the following Ministers:

- Minister administering the Public Health Act 1991 (Minister for Health)
- Minister administering Chapter 2 of the Water Management Act 2000 (Minister for Water)
- Minister administering the Protection of the Environment Operations Act 1997 (Minister for Climate Change and the Environment)
- Minister administering the Environmental Planning and Assessment Act 1979 (Minister for Planning)

IPART must also call for submissions on the application from the public. This will be Council's only opportunity to provide a submission the WIC Act approval process.

Voluntary Planning Agreement

The environmental Planning and Assessment Act 1979 provides a statutory system of planning agreements to accommodate a growing trend in negotiation and agreement between planning authorities and developers to exact public benefits from the planning process.

In the Department of Planning's Planning agreements Practice note of 19 July 2005 it is noted that agreements provide a flexible means of achieving tailored development outcomes

and targeted public benefits, and provide enhanced and more flexible infrastructure funding opportunities for planning authorities. Negotiations tend to promote co-operation and compromise over conflict and can provide a more efficient means of public participation in planning decisions.

Voluntary planning agreements are widely utilised by many NSW councils as a means of complementing section 94 contributions and establishing a clear up-front process whereby outcomes are defined and delivered under a legally binding agreement generally prepared by lawyers on behalf of a council.

Due to the complexity of issues and potential adverse environmental impacts and associated risks to Council relating to the management of waste water, its treatment and disposal, it is considered appropriate to complement the requirements of the Water Industry Competition Act 2006 (WIC Act) and Independent Pricing and Regulatory Tribunal (IPART) Licensing regime with a voluntary planning agreement.

The use of a voluntary planning agreement is seen as a reliable means of entering into negotiations with the proponent regarding a guaranteed outcome. Because such agreements are typically prepared by Council's legal service providers, it is recommended that this matter be referred to Council's solicitors should the proponent agree to enter into an agreement, at their cost, the outcome of which would be consistent with Council's previous resolution which requires the applicant to demonstrate certainty of all aspects of the scheme to Council's satisfaction.

Resolutions aim to avoid unreasonable claims upon Council

As highlighted above, it is not Council's intention to provide sewerage services to this land, and as such, the provision of services are the full responsibility of the developer to be delivered in accordance with a WIC Act approval and voluntary planning agreement. This approach will provide Council with a strong position to defend against any future developers claim that Council is obligated to provide sewerage services because it approved the rezoning.

However, it should be noted that in the event of failure of the private water and wastewater utility company Council is most likely to become the Operator and Retailer of last resort under such an approval.

Because this issue has been a major constraint on the ability to rezone the site, while it is recommended that Council resolve to support the rezoning of the site for industrial purposes, resolutions presented have taken a precautionary approach, as supported by the voluntary planning agreement, by which any failure to secure a WIC Act approval will not place Council in the position of having to provide services to the site ahead of any longer term planning for the broader west Pottsville locality.

Should the applicant not acquire or be unable to obtain a WIC Act licence as has been committed to and that would be required as part of any voluntary planning agreement then Council would have sufficient justification to warrant a planning proposal to rezone the land to a more appropriate and less intensive zoning.

3. DECCW response to alleged wilful damage of Aboriginal heritage scar tree

On 16 February 2010 Council received an electronic copy of a letter to be mailed from the Department of Climate Change and Water addressing requests from Council regarding the Department's investigations into alleged wilful damage of Aboriginal heritage scar tree on the site, a copy of which can be seen in Attachment 1.

The Department's letter refers to a scarred tree (No: 04-2-0173) registered on the DECCW Aboriginal Heritage Information Management System (AHIMS) database, noting that the tree was identified and recorded on 29 May 2008 by a professional archaeologist in conjunction with the local Aboriginal community.

The letter advises that DECCW has conducted an on site visit on 18 June 2010 and further investigations, which has resulted in the property owner and the arborist who assessed the age of the tree after it was burnt, being issued with an Official Caution and advised of their responsibilities and significantly increased penalties.

The Department then notes that Council was aware of alleged breach six months prior to it being reported to DECCW, pointing out that the National Parks and Wildlife Act (NPW Act) had a statute of limitations for Aboriginal cultural matters of two years from the date the incident occurred, and that the delay in notification inhibited DECCW's ability to investigate and prosecute within the remaining timeframe. As of 1 October 2010, the NPW Act amended the statute of limitations to commence from the date the authority has been notified, not from the date of the impact.

In concluding, the Department welcomes the opportunity to work with Council to ensure both agencies efforts to protect the environment and improve investigation processes, and has requested that they be notified as soon as Council becomes aware of any alleged incident.

In responding to this letter, it is acknowledged that reporting to the DECCW was delayed; however, a number of initiatives have been implemented subsequent to the lessons gained through this event, including:

- the endorsement of a Notice of Motion put forward by Cr Holdom at Council meeting of 16 March 2010, which resolved 4:3 that *"At the Ordinary Meeting of Council, following advice regarding damage to Aboriginal Artefacts, the Director Planning and Regulation notifies Council of the said damage, by way of a Confidential Attachment to the Ordinary Business Paper, under "Reports from the "Director Planning and Regulation", and*

- Completion of a full days training for Council officers involved in the inspection of alleged breaches, collection and presentation of evidence and legal procedures, offered free of charge by Lindsay Taylor Lawyers.

In addition to these initiative of Council it is recommended that Council's Development Assessment and Regulation Units develop a protocol for the reporting in confidence to the Department of Environment, Climate Change and Water of any alleged breaches concurrent with the report to Council.

Scar Tree protected and revegetation to be undertaken

As previously reported to Council, the scarred tree is now excluded from the proposed area of development and will form part of a rehabilitated parcel to be agreed with the proponent prior to rezoning of the site, consistent with Council's endorsement of resolution of from meeting of 17 August 2010 that;

“Endorses that Council officers negotiate with the landowner for the restoration, revegetation, contributory off-set planting, maintenance, and protection of vegetation, as necessary, through a legally binding agreement, and that a satisfactory resolution of these matters be concluded prior to the gazettal of any rezoning under GT1/LEP/2000/85 (Amendment No. 85)”

Response to the DECCW

While it is acknowledged that delays occurred in the notification to DECCW, Council has since been pro-active in ensuring a recurrence of such delays does not occur.

However, it is evident from the Department's response to this and other similar incidents in the Tweed Shire, and their advice at Councillor's Workshop last year that they have limited resources and capacity to effectively respond to smaller scale, land clearing actions throughout the State, which raises particular concerns for the overall management of native vegetation in the Tweed LGA.

The Tweed is recognised for the value of its natural environment, an asset which brings significant national and international recognition; however, the very legislation which is purported to provide protection of these national landscape assets is failing to meet expectations of Council or the community.

It is therefore recommended that Council seek a high level meeting with DECCW to establish a more suitable arrangement for the assessment, investigation and enforcement of vegetation matters generally, Aboriginal artefacts and standard instrument template implications specifically.

Conclusion

Progression of the Pottsville Employment Land rezoning has been hampered by a series of complex issues, negotiations and legal matters. It has nevertheless advanced to the point where the major outstanding issues affecting the site fall predominantly to the proponent's ability to service the site.

Council's Water Unit has reviewed the Sirex system proposed and provided an 'in principle' support for the proposed a standalone private water and wastewater utility scheme for the site under the Water Industry Competition Act 2006 (WIC Act) as administered by the Independent Pricing and Regulatory Tribunal (IPART), and supports in principle the proposal to enter into an agreement with the utility service provider under an IPART licence to provide retail services.

Because of the potential exposure of Council to claims for provisions of services should a stand alone system not eventuate, and to provide certainty that the applicant will pursue such a system it is recommended that a voluntary planning agreement be entered into to ensure that the applicant demonstrate certainty of all aspects of the scheme to Council's satisfaction.

The Department of Environment Climate Change and Water has formally responded to Council's request for action on alleged wilful damage of Aboriginal heritage scar tree, which cites limited action taken, which is considered to be less than appropriate. In response it is recommended that a formal meeting with DECCW be convened to better define the Department's intentions and ability to investigate and enforce native vegetation related matters in the Tweed.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

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 (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).

1. DECCW Letter regarding Scarred Tree (ECM 29068433)

Attachment 3

Letter from the Roads and Traffic Authority

File No. 438.5314 NTH10/00132 10/1282
Reference. GT1/LEP/2000/85
Michael Baldwin



The General Manager
Tweed Shire Council
PO Box 816
Murwillumbah NSW 2484

LEP - POTTVILLE INDUSTRIAL AREA

| |
|--|
| TWEED SHIRE COUNCIL |
| FILE No: GT1/LEP/2000/85 Pt. 5 |
| DOC. No: 20067923 |
| REC'D: 30 JUL 2010 |
| ASSIGNED TO: Russell, S. |
| HARD COPY <input checked="" type="checkbox"/> IMAGE <input type="checkbox"/> |

LINK: 18141967

Draft LEP 85 Rezoning Submission Proposed Employment Land, Pottsville Mooball Road,
Adjacent to the Pacific Highway South of the Pottsville Interchange.

Dear Sir

I refer to your letter dated 16 June 2010, your reference GT1/LEP/2000/85, regarding the above proposal.

The Roads and Traffic authority (RTA) does not support the rezoning of the land for purposes of employment lands outside that identified in the Department of Planning's Far North Coast Regional Strategy. The traffic report prepared by Cardno Eppell Olsen includes land north to Cudgera Creek Road. This appears to be inconsistent with the land identified in the Far North Coast Strategy

With regards the current rezoning proposal the RTA would offer the following comments

- The proposal is relying on the use of RTA land in the current Highway corridor as a "buffer" with additional planting – there should be no reliance on RTA land, and a separate buffer provided so that maintenance of plants on RTA land does not become an issue.
- The proposal should demonstrate that the capacity and safety of Cudgera Creek Road interchange with the Pacific Highway is not compromised. It is noted that the Cardno Eppell Olsen traffic report assesses the traffic impact 10 years into the future. The RTA Road design guide recommends forecasts of traffic impacts twenty years into the future. Given the significant investment of public funds towards upgrading the Pacific Highway, in this instance twenty year traffic projections would be appropriate to determine future impacts.
- If Commercial or retail types of development such as bulky goods retail are proposed in the employment lands, then the Section 117 direction regarding commercial and retail development adjacent to the Pacific Highway will need to be considered. This may mean some activities may not be permissible.
- No advertising should be permissible along the Pacific Highway boundary or be directed at motorists on the motorway. The RTA would request screening if possible to obscure the development from motorists using the Highway.

Roads and Traffic Authority

31 Victoria Street Grafton NSW 2460
Post Office Box 576 Grafton NSW 2460 DX7610
www.rta.nsw.gov.au | 02 66401300

- Given the extent of the earthworks proposed it may not be practical to screen the proposal from the Pacific Highway. It is recommended an independent road safety audit be undertaken to assess the impacts on the safe operation of the Motorway caused by distraction to motorists.
- Mitigation of Highway traffic noise would be the responsibility of the developer
- The RTA is concerned that insufficient information has been provided to be certain this excavation will not affect the slope stability of embankments supporting the Pacific Highway.

From a general planning perspective, it would be a good outcome if the industrial area was not visible from the Highway. The proposed industrial area also seems quite isolated and would generate significant travel for workers, customers and servicing.

If you have any further enquiries please contact Michael Baldwin on 6686 1832 or email land_use_northern@rta.nsw.gov.au.

Yours faithfully



David Bell
Regional Manager, Northern Region

29 JUL 2010



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