

**TITLE:** [PR-CM] Planning Proposal PP10/0007 - Mooball Planning Proposal

**SUBMITTED BY:** Planning Reforms

**FILE REFERENCE:** PP10/0007 Pt2

Valid



## Civic Leadership

### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- |       |   |
|-------|---|
| 1     | Civic Leadership  |
| 1.5   | Manage and plan for a balance between population growth, urban development and environmental protection and the retention of economical viable agriculture land             |
| 1.5.3 | The Tweed Local Environmental Plan will be reviewed and updated as required to ensure it provides an effective statutory framework to meet the needs of the Tweed community |

### SUMMARY OF REPORT:

The purpose of this report is to provide an update on the status of the 'Mooball Planning Proposal' (the Proposal), detail the ongoing actions following Council's resolution of 19 September 2013 and provide an approach for advancing the Proposal.

The report advises that on 9 October 2013, a meeting between the relevant parties was facilitated by Council officers in an attempt to resolve a mutually acceptable buffer treatment between the proposed future development and Lot B DP 419641 (Lot B). At this meeting an amended Concept Plan was tabled by the proponent, which included the deletion of a further two conceptual development lots (with that area of land to be retained within a rural zone). Subsequent correspondence from the Proponent has confirmed this offer and is reflected in the current concept plan.

The Proponent has also made about nine other commitments relating to the ongoing land management and it is understood that if the parties reach agreement on those that they are to be made enforceable at law. These commitments and agreements are of a private nature and collateral to the planning proposal.

Following a review of the Proponent's tabled proposal representatives of Lot B have since advised Council staff of their objection to the planning proposal and rejection of the commitments offered. This position remains unchanged since the owner's of Lot B first raised their issues with Council in December 2012.

From the information submitted to Council officers it appears that establishing a mutually acceptable buffer treatment is not presently achievable. In light of the parties entrenched views on the issues deferring a decision on the planning proposal is not likely to result in a mediated outcome. The planning proposal should be considered on its merit.

Despite several other matters being raised in objection, the Proposal is considered to be adequately justified and on merit warrants its public exhibition. Accordingly, it is

recommended that the Proposal be referred to the NSW Department of Planning and Infrastructure for a Gateway Determination.

#### **RECOMMENDATION:**

**That:**

- 1. The Planning Proposal PP10/0007 relating Lot 2 in DP 534493 and Lot 7 in DP 593200 be updated to align with the preliminary subdivision layout illustrated in the Concept Master plan detailed within Figure 1 of this report;**
- 2. The Planning Proposal, as amended in accordance with Resolution 1 above, be referred to the NSW Department of Planning and Infrastructure requesting a Gateway Determination under Section 56(1) of the *Environmental Planning and Assessment Act 1979*;**
- 3. On receiving an affirmative Determination Notice all outstanding studies and works be prepared and the Planning Proposal finalised, following which it is to be exhibited in accordance with the Determination or where there is no condition or a condition requiring a public notification less than 28 days, for a period not less than 28 days; and,**
- 4. Following public exhibition of the Planning Proposal a report is to be submitted to Council at the earliest time detailing the content of submissions received and how those, if any, issues have been addressed.**
- 5. Prior to any public exhibition of the Planning Proposal a Site Contamination Report demonstrating compliance with the provisions and requirements of State Environmental Planning Policy 55 - Remediation of Land, Clause 6, is to be prepared to Council's satisfaction.**

**REPORT:**

At its meeting of 19 September 2013, Council considered a report relating to PP10/0007 - Mooball Planning Proposal (the Proposal) which provided an approach for advancing both the Proposal and focussed investigations between Lot B DP 419641 (Lot B) and the surrounding subject site. Council resolved that the applicant, Jefferson Lane Pty Ltd, be requested to meet with owners of Lot B to seek a mutually acceptable buffer treatment between Lot B and the eastern edge of the proposed residential redevelopment area. Post the Council resolution, a meeting was organised by Council officers and further correspondence was received from both parties. The details of these further actions are outlined below.

**Buffer Treatment to Lot B**

On 9 October 2013 a meeting in relation to the above was held at Council's Murwillumbah office between the proponent and their representatives, the landowners of Lot B and their representatives, as well as the Tweed Mayor Councillor Longland and Council's Director Planning and Regulation. Minutes of this meeting and supporting material have been distributed to Councillors under separate cover, however the primary amendment from previous reporting and discussions was the proposed deletion of a further two (2) development lots, to form rural zoned land and assist with the qualitative retention of Lot B's rural amenity. The referred lots are displayed within Figure 1.

# CONCEPT MASTERPLAN 01

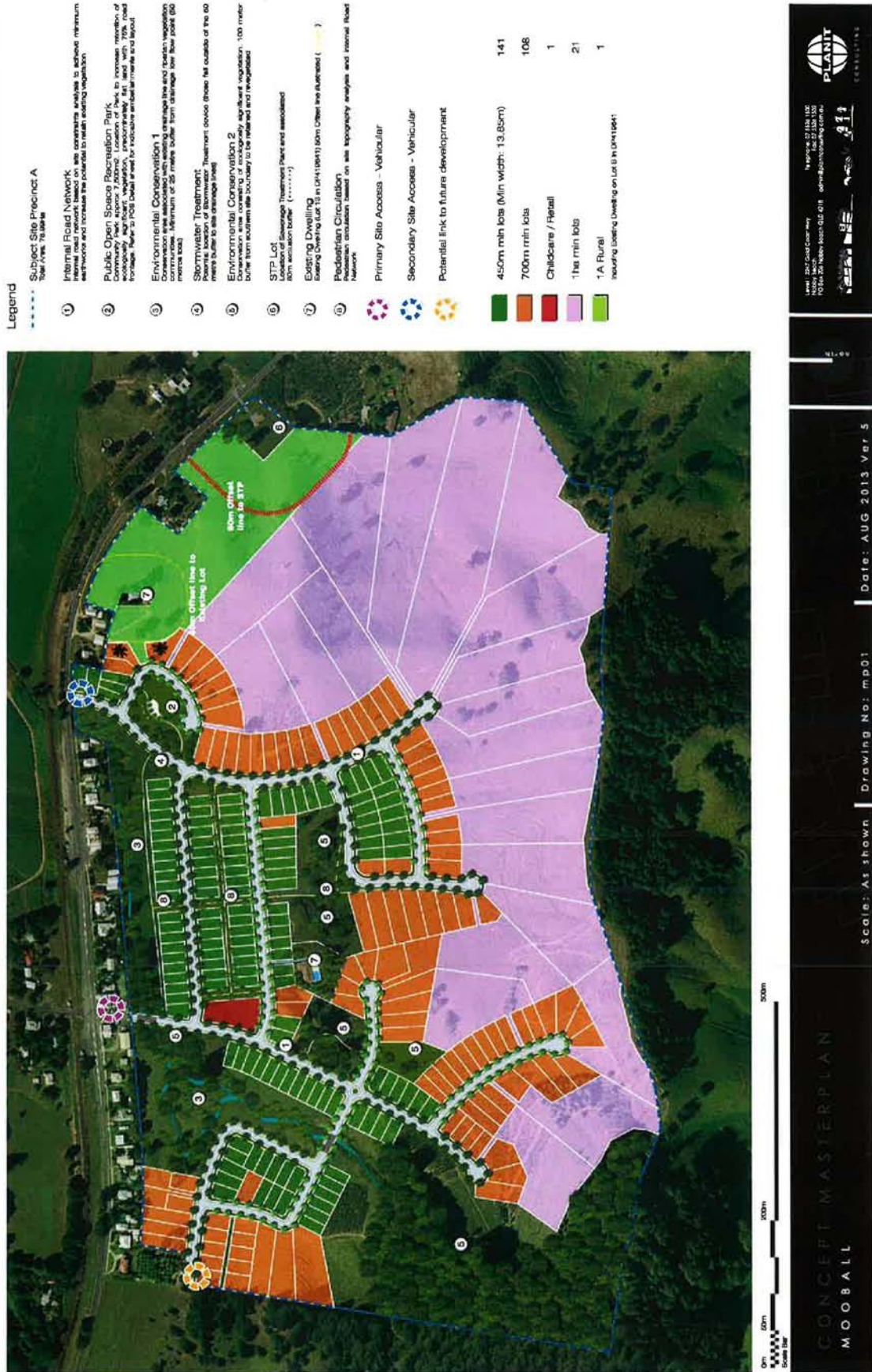


Figure 1 - Proposed Concept Plan (Lots to be deleted annotated by asterisk)

Subsequent to the meeting, the proponent submitted further correspondence outlining a total of nine (9) commitments, which they were willing to make legally binding between the

parties. Representatives on behalf of Lot B have submitted to Council a response regarding the commitments stated, as well as other concerns regarding the Proposal. These advices have been forwarded to the Councillors, as well as the proponent, under separate cover, however its content can be surmised as follows:

- *Preamble* - Concerns were raised regarding the validity and ability to bind the key parties to the stated commitments.
- *The Commitments* - A variety of concerns are raised regarding clarity, means of delivering commitments and inadequacy of the proposed development buffer.
- *Environmental Pollution Issues* - Concerns are raised regarding the level of assessment undertaken to-date in relation to previous banana plantations on the site, the Environmental Protection Authority Guidelines for Assessing Banana Plantations and potential health risks as a result of disturbing this land.
- *The LUCRA* - Concerns are raised in relation to the validity of the submitted Land Use Conflict Risk Assessment (LUCRA).
- *The LEP* - Concerns are raised that the 'LEP' does not give adequate consideration to the impacts of flooding, geotechnical challenges including mass movement, erosion and land slip hazard and land contamination.

The advices conclude that the landowners of Lot B maintain their objection and reject the commitments offered. The advices also surmise that the Proposal lacks significant and substantial detail necessary to progress the project.

In addition to above, further concerns regarding the merits of the Proposal have been raised by representatives of Lot B, (forwarded to Councillors under separate cover) including:

- *Compliance with applicable strategic planning policies* (subject land is not identified as a State Significant Development, a State Significant Site, or within the Far North Coast Regional Strategy (FNCRS) and only part of the subject land was identified within the 'Tweed Urban Land Release Strategy').
- *Bushfire Hazard*.

#### Planning Comment

In relation to issues raised relating to the *Preamble* and *The Commitments*, Council officers are not in a position to provide direct commentary as the matters contained therein arise between the parties not for consideration by Council, as these do not bear directly on the strategic investigation of the site.

In response to *The LUCRA*, this matter was reported in detail within the Council report of 19 September 2013 (a copy of which is included as Attachment 1 of this report). To-date, no additional information of significance has been sighted by Council officers that alter the findings previously reported.

Based on the information submitted to Council officers, it appears that the establishment of a mutually acceptable buffer treatment between Lot B and the eastern edge of the proposed residential development area has not been achieved between the parties. In light of the established positions of both parties, further deferring a decision on the Proposal is not likely to result in a mediated outcome and the proposal should be considered on its merits.

A formal resolution either to support the proposal being forwarded for a Gateway Determination, or alternatively, the Proposal being refused, provides the clearest path for both parties and the Council. It should be acknowledged that further discussions and investigations between the two (2) parties can occur should they choose and should the

proposal proceed to the next stage a formal public exhibition will provide additional opportunity for broader public comment and input.

In response to the remaining issues raised, the following planning comments are provided.

#### *Environmental Pollution Issues*

Contamination reporting submitted with the Proposal request identifies past intensive agricultural pursuits of the subject site, including banana cultivation and associated activities. Council's Planning Consultant has advised the contamination assessment submitted by the Proponent concludes that no residential criteria for contaminants were exceeded. However, Council's Environment and Health Unit have provided advice that the submitted report is limited and further more detail contamination assessment is required.

Clause 6 of State Environmental Planning Policy 55 - Remediation of Land (SEPP 55) applies. Council must be satisfied for the purposes of a rezoning, where the use of the land will change, that the site is suitable for that purpose. Given the past intensive agricultural use of the land, identified in the Proponent's report, it is essential that the site be validated as suitable for residential use or in the case of land requiring remediation that the land will be remediated before the land is used for that purpose. The extent of land contamination and or need for remedial works has not be ascertained on the current level of investigation and enquiry undertaken. Further investigation and reporting is required and is the basis for a recommendation to this report.

SEPP 55 does not permit the planning authority to duly consider land contamination as a deferred matter, such as leaving it to the DA stage, as it must be considered prior to the rezoning being made.

#### *The LEP*

Flooding - an area of the subject site is identified as flood prone land on Council's Design Flood Level Map. The Proposal has responded to this constraint by negating the development of some of this area through an environmental protection zoning, however the residue is proposed to be filled and developed for urban purposes. The submitted documentation concludes that "*Q100 flood modelling will therefore be required to ensure that there are no adverse impacts from the proposed filling*". The site is also identified as affected by the Probable Maximum Flood (PMF), however the majority of the site is above, or has immediate access to land above the PMF. Comments have been received from Council's Planning and Infrastructure Unit as well as Council's assessing planning consultant, whom have not raised any significant concerns. Council's planning consultant has concluded that the impacts of filling and excavation work can be assessed at the development application stage.

Geotechnical Challenges - As previously reported, a significant portion of the elevated land within subject site contains slopes greater than 18 degrees (33%). This land is contiguous and highly constrained, accordingly traditional an 'urban' zoning or lot sizes are not considered appropriate. In order to reflect the constraint the Proposal seeks to zone this land 1(c) Rural Living and require a minimum lot size of 1ha.

Likewise, where land is between 12 – 18 degrees, or greater than 18 degrees but not in a contiguous form, the Proposal responds to the site attributes by seeking a minimum lot size of 700m<sup>2</sup>. By allowing a larger 'urban' lot, the built form can more appropriately respond to the slope through building citing and construction type. The increased minimum lot size should assist with reducing potential impacts at the property interface and is a conservative approach for managing site issues.

Engineering reports supporting the Proposal acknowledge that *“no significant geotechnical issues were noted that would preclude the site from being developed for its proposed usage. However, it must be noted that this assessment is based on very limited work over a large area and as such should be considered preliminary only and should be confirmed by a more detailed geotechnical investigation and assessment”*.

The minimum lot sizes prescribed within the Proposal restrict the intensity of development on the parts of the site with steeper slopes and reduce the level of landslide risk. Beyond the Planning Proposal process, separate applications are required to subdivide and develop the land, this represents the appropriate time to pursue further investigations as these applications will include the final development forms (i.e. precise locations of roads, housing lots and pads).

*Compliance with applicable strategic planning policies*

The Far North Coast Regional Strategy (FNCRS) identifies that any development proposed for greenfield sites in the non-coastal area is either to be within the Town and Village Growth Boundary, or will be subject to satisfying the Sustainability Criteria specified in Appendix 1 of that Strategy. The Proposal is not located within the Town and Village Growth Boundary, however is considered to satisfy the established Sustainability Criteria.

The Proposal has been pursued following the longstanding identification for growth and expansion of Mooball, most recently through Council's urban release strategy, the Tweed Urban and Employment Land Release Strategy 2009 (TUELRS). The TUELRS provides a co-ordinated strategy and assists in establishing planning controls that balance the need for urban growth against the protection of agriculture, village character and the environment. The Proposal provides a site specific investigation and implementation of the TUELRS, as it relates to Mooball.

The TUELRS identifies that where a property is partly identified and partly not, that the entire property should be considered in any detailed analysis to ensure that the best land is ultimately identified for future urban use. The extent of 'Area 9' does not follow cadastral boundaries; rather predominately traces the extent of land with less than 14 degrees slope. Accordingly the whole of Lot 2 DP 534493 and Lot 7 DP 5932000 have been investigated within the Proposal, resulting in an amended 'urban footprint'.

Within the NSW Department of Planning and Infrastructure's *'Guide to Preparing Local Environmental Plans'*, it is stated that delegation of plan making functions can be exercised by local councils and provides a list of types of amendments routinely delegated to Council's. The list includes LEP amendments of a 'minor' nature, i.e. mapping corrections, Section 73A matters e.g. amending references to documents/agencies, minor errors and anomalies, spot rezonings consistent with a Regional Strategy or a local strategy endorsed by the Director-General or spot rezonings that will result in an up-zoning of land in existing areas zoned for residential, business, and industrial purposes.

As has been detailed to Council previously, it is considered appropriate to request plan-making delegations remain with the DP&I as the Proposal is not considered a minor amendment and comprises a number of complex elements, including:

- Subject site is located outside of the established Town and Village Growth Boundary for urban growth established within the DP&Is Far North Coast Regional Strategy;
- Servicing by way of a future, private, stand-alone sewerage system; and

- Proposes to rezone portions of Rural land to Environmental Protection, an outcome the DP&I have recently been investigating (E-Zone Review).

### *Bushfire Hazard*

The southern edge of the site, on the escarpment, is identified as being part of the 100 metre buffer zone, with an area of Vegetation Category 1 bushfire hazard identified in the south-western corner of the site. The Proposal has responded to these constraints by including much of this land within an Environmental Protection zone, or the Rural Living zone. Land on the fringe of this hazard, whereby suitable buffering can feasibly be provided, are proposed to be zoned Village. An application for a Bush Fire Safety Authority, under the Rural Fires Act 1997, will be required within any future development application, which will include further site specific measures in response to the hazard.

### *Planning Comment Summary*

In light of the information submitted to Council officers since Council's meeting of 19 September 2013, establishing a mutually acceptable buffer treatment appears unachievable between the parties and further deferring a decision on the Proposal is seen to be unnecessary. A formal resolution either to support the proposal being forwarded for a Gateway Determination, or alternatively being refused, provides the clearest path for both parties.

The concerns raised by the owner's and their representative of Lot B have not introduced anything more into the assessment that might otherwise persuade Council officers' to form an opinion on the merit of the proposal different to that previously reported. Without intending to diminish the impact of the proposal as perceived by the landowner's of Lot B, on that property, the level of technical evaluation has led to a conclusion that the proposal has merit and that the proposed buffer zone (see figure 1) is adequate.

The Planning Proposal has now reached a stage where a decision must be made on whether to progress the Proposal to the Gateway. This is critical for several reasons. Firstly, the DP&I must consider whether a draft LEP should be made. Secondly, the commercial decisions about whether to continue the level of expenditure required to complete the Proposal require a level of certainty that is only likely to be gained by way of a Determination Notice, and lastly, the broader public notification, which is a statutory process, is essential for gaining a broader view on what the general public think about the Proposal.

### **Strategic Compliance and Considerations**

At its meeting of 19 September 2013, Council also resolved that a report be submitted addressing the strategic compliance with the aims of the Tweed Urban and Employment Land Strategy 2009.

The expansion of Mooball has been identified within a number of Council's residential and urban release strategies continuously over the past 26 years. The Tweed Urban and Employment Land Release Strategy 2009 (TUELRS) provides the most recent strategic guidance for potential expansion in Mooball.

The TUELRS identifies 'Area 9' within Mooball for future investigation in the short-term (0-10 years), with a target growth range of 259 – 481 dwellings (7 - 13 dwellings per hectare). In addition, the TUELRS identifies that *'all investigation areas identified in this Strategy need to be designed to maximise the density yield of the land'*.



Whilst it is difficult at this stage to quantify with accuracy the population yield of the previous concept plans it is estimated on the most recent iteration that there is an anticipated yield of about 271 lots, which is about 67 lots less than the concept plan reported in December 2012. This later plan while within the TUELRs predicted yield is tracking more heavily toward the lower yield rates and is likely to be approaching the commercial viability threshold.

### **OPTIONS:**

That Council:

1. Proceed with the recommendations within this report and refer PP10/0007 to the NSW Department of Planning and Infrastructure for a Gateway Determination; or
2. Reject the planning proposal.

Council officers recommend Option 1.

### **CONCLUSION:**

Subsequent to previous Council reporting, negotiations between the landowners of Lot B DP 419641 (Lot B) and the proponent have occurred, however without advancement towards a mutually acceptable outcome.

The proponent has prepared a Land Use Conflict Risk Assessment (LUCRA) which establishes that the proposed 50 metre development buffer from Lot B meets the quantitative needs to mitigate land use conflict between future urban development and the rural pursuits of Lot B. The Proponent has also stated that the 50m buffer zone is inclusive of a qualitative buffer.

Previously Council officers had identified concerns regarding the qualitative measures of the rural amenity currently afforded to Lot B. In response the proponent has deleted a further two of the conceptual development lots to provide greater setback to Lot B, however and notwithstanding their offer the Proponent is of the view that increasing this area of buffer will have minimal benefit to Lot B over and above the area already earmarked. The landowners of Lot B maintain that this buffer is insufficient and should be extended to 100 metres.

Council officers are satisfied that the merit of the Proposal and level of technical detail submitted is sufficient and warrants progression of the proposal to the NSW Department of Planning & Infrastructure for a Gateway Determination.

It is recommended that the Planning Proposal is suitable for a Gateway Determination.

### **COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable.

**b. Budget/Long Term Financial Plan:**

Not applicable

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

**Consult**-We will listen to you, consider your ideas and concerns and keep you informed.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Attachment 1 - Council report of 19 September 2013 (ECM 3212905)

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